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SECNAVINST 1910.4B
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SECNAV INSTRUCTION 1910.4B

From: Secretary of the Navy

Subj: ENLISTED ADMINISTRATIVE SEPARATIONS

- Ref:
- (a) DOD Directive 1332.14, "Enlisted Administrative Separations," 21 Dec 93 (NOTAL)
 - (b) Title 10, United States Code
 - (c) Public Law 97-66, "The Veterans' Disability Compensation, Housing, and Memorial Benefits Amendments Act of 1981," 17 Oct 81, (95 Stat. 1035)
 - (d) Uniform Code of Military Justice (UCMJ)
 - (e) SECNAVINST 5420.174C, "Review at the Level of the Navy Department of Discharges from the Naval Service," 22 Aug 84 (NOTAL)
 - (f) Article 1129, United States Navy Regulations (1990) (Record of Fitness)
 - (g) JAGINST 5800.7C, "Manual of the Judge Advocate General (JAGMAN)," 3 Oct 90
 - (h) DOD Directive 1205.5, "Transfer of Members Between Reserve Components of the Military Services," 10 Apr 95 (NOTAL)
 - (i) DOD Directive 1300.6, "Conscientious Objectors," 20 Aug 71 (NOTAL)
 - (j) DOD Directive 1315.15, "Special Separation Policies for Survivorship," 26 Sep 88
 - (k) NAVMED P117, Manual of the Medical Department (NOTAL)
 - (l) Section on Mental Disorders, International Classification of Diseases and Injuries - 9, Diagnostic and Statistical Manual (DSM-IV) of Mental Disorders, 4th Edition, Committee on Nomenclature & Statistics, American Psychiatric Association, Washington, D.C., 1994 (NOTAL)
 - (m) DOD Directive 1327.5, "Leave and Liberty," 24 Sep 85 (NOTAL)
 - (n) SECNAVINST 1850.4C, "Department of the Navy Disability Evaluation," 8 Mar 90 (NOTAL)
 - (o) DOD Directive 1304.26, "Qualification Standards for Enlistment, Appointment, and Induction," 21 Dec 93 (NOTAL)
 - (p) DOD Directive 1215.13, "Unsatisfactory Performance of Ready Reserve Obligation," 30 Jun 79 (NOTAL)



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- (q) DOD Instruction 5505.8, "Investigations of Sexual Misconduct by the Defense Criminal Investigative Organizations and Other DoD Law Enforcement Organizations," 28 Feb 94 (NOTAL)
- (r) Manual for Courts-Martial, 1995 Edition
- (s) SECNAVINST 5300.28B, "Military Alcohol and Drug Abuse Prevention and Control," 11 Jul 90
- (t) DOD 5200.2-R, "DoD Personnel Security Program," 1 Jan 87, authorized by DOD Directive 5200.2, 6 May 92 (NOTAL)
- (u) DOD Directive 1308.1, "Physical Fitness and Weight Control Programs," 29 Jun 81
- (v) DOD Instruction 1336.1, "Certificate of Release or Discharge from Active Duty," 6 Jan 89 (NOTAL)

Encl: (1) Definitions
(2) Administrative Separation Guide

1. Purpose. To reissue and update the policies, standards, and procedures for the administrative separations of enlisted servicemembers from the Department of the Navy, based upon the provisions of references (a) through (v). This instruction is a complete revision and should be reviewed in its entirety.

2. Cancellation. SECNAVINST 1910.4A, BUPERSINST 1910.8A, and Report Control Symbol SECNAV 1910-1.

3. Applicability and Scope. The provisions of this instruction apply to the Department of the Navy, including all Reserve components.

4. Policy

a. Navy policy is to promote the readiness of the naval service by maintaining high standards of conduct and performance. Separation policy promotes the readiness of the naval service by providing an orderly means to:

(1) Judge the suitability of persons to serve in the Navy and Marine Corps on the basis of their conduct and their ability to meet required standards of duty performance and discipline;

(2) Maintain standards of performance and conduct through characterization of service in a system that emphasizes the importance of honorable service;

(3) Achieve authorized force levels and grade distributions; and

(4) Provide for the orderly administrative separation of servicemembers in a variety of circumstances.

b. Navy separation policy is designed to strengthen the concept that naval service is a calling different from any civilian occupation.

(1) Enlisting in the Navy or Marine Corps involves a commitment to the United States, the Service, and one's fellow citizens and servicemembers to successfully complete a period of obligated service. Early separation for failure to meet required standards of performance or discipline represents a failure to fulfill that commitment.

(2) Millions of Americans from diverse backgrounds and with a wide variety of aptitudes and attitudes upon entering military service have served successfully in the Armed Forces. It is Navy policy to provide servicemembers with the training, motivation, and professional leadership that inspires the dedicated enlisted servicemember to emulate his or her predecessors and peers in meeting required standards of performance and discipline.

(3) When persons enter naval service, the Navy invests substantial resources in their training, equipment, and related expenses. Separation prior to completion of an obligated period of service is wasteful because it results in loss of this investment and generates a requirement for increased accessions. Conversely, retaining individuals in the naval service who will not or cannot conform to naval standards of conduct, discipline, and performance creates a high cost in terms of pay, administrative efforts, degradation of morale, and substandard mission performance. Both situations represent an inefficient use of limited Defense resources. Therefore, every reasonable effort must be made to identify, in a timely manner, servicemembers who exhibit a likelihood for possible early separation, and either improve those servicemembers' chances of retention through counseling, retraining, and rehabilitation, or separate promptly those servicemembers who do not demonstrate potential for further useful naval service.

c. Servicemembers being considered for administrative separation because of conduct or performance not meeting Navy or Marine Corps standards shall be processed expeditiously. Once a

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servicemember has been identified for processing and proceedings have commenced in a given case, he or she should receive sufficient supervision to preclude him/her from having any adverse effect on good order and discipline in the unit. Such supervision should include separate berthing, where facilities are available. Further, when local processing has been completed and separation has been recommended, the servicemember concerned should be physically separated from the command whenever possible by means of leave, temporary reassignment, or other methods while undergoing final processing.

5. Completion of Total Military Obligation. Servicemembers separated from active duty or from the Selected Reserve who have any potential for future mobilization will normally be transferred to the Individual Ready Reserve (IRR) to complete the remainder of their total military obligation, subject to the following limitations:

a. Servicemembers whose service is characterized as Other Than Honorable will not be transferred to the IRR.

b. Servicemembers separated on the basis of drug abuse, homosexual conduct, or defective enlistment or induction will not be transferred to the IRR.

c. When there are medical reasons why the servicemember would not be available to meet mobilization requirements, he or she will not be transferred to the IRR.

6. Processing Goals. To support policy objectives and further the efficient administration of enlisted separations, every effort shall be made to adhere to the time goals shown below for processing separations. Failure to process an administrative separation within the prescribed time goals shall not create a bar to separation or characterization.

a. Servicemember Waives or is not Entitled to an Administrative Board. Thirty working days from the date servicemember is notified of administrative separation processing to the date he or she is separated.

b. Servicemember Elected an Administrative Board. Sixty working days from the date servicemember is notified of administrative separation processing to the date he or she is separated; or by the servicemember's expiration of enlistment or fulfillment of service obligation, whichever occurs first.

NOTE: Although personnel should be separated within these processing time goals, commanding officers may delay separation to afford separating servicemembers ample time to complete all transition assistance services to which they are entitled under OPNAVINST 1900.2 (series) (NOTAL).

7. Periodic Explanations. An explanation shall be given to all enlisted servicemembers of the types of separations, the basis for their issuance, the possible effects of various actions upon reenlistment, civilian employment, veterans' benefits, and related matters, and the effects of 10 U.S.C. 977 (reference (b)) and Public Law 97-66 (reference (c)) concerning denial of certain benefits to servicemembers who fail to complete at least 2 years of an original enlistment. Such explanation may be provided in the form of a written fact sheet or similar document. The periodic explanation shall take place at least each time the provisions of the Uniform Code of Military Justice (UCMJ) (reference (d)), are explained under Article 137. The requirement that the effects of the various types of separations be explained to enlisted servicemembers is a command responsibility, not a procedural entitlement. Failure on the part of the servicemember to receive or to understand such explanation does not create a bar to separation or characterization.

8. Provision of Information During Separation Processing. During separation processing, information concerning the purpose and authority of the Naval Discharge Review Board (NDRB) and the Board for Correction of Naval Records (BCNR), established under 10 U.S.C. 1552 and 1553 (reference (b)) and SECNAVINST 5420.174C (reference (e)), shall be provided to all servicemembers, except when the separation is for an immediate reenlistment. Specific counseling is required under 38 U.S.C. 3103(a) (reference (b)), which states that a discharge under other than honorable conditions, resulting from a period of continuous, unauthorized absence of 180 days or more, is a conditional bar to benefits administered by the Department of Veterans Affairs (DVA), notwithstanding any action by a Discharge Review Board. The information required by this paragraph should be provided in the form of a written fact sheet or similar document. Failure on the part of the servicemember to receive or to understand such explanation does not create a bar to separation or characterization.

9. Responsibilities. The Chief of Naval Operations and the Commandant of the Marine Corps shall ensure that the policies, standards, and procedures of this instruction are applied

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consistently, that fact-finding inquiries are conducted properly, that no abuse of authority occurs, and that failure to follow the provisions of this instruction results in appropriate corrective action.

10. Action. The Chief of Naval Operations and Commandant of the Marine Corps are authorized to delay implementation of this instruction, all or in part, up to a maximum of 45 days after the date of this instruction. Separation proceedings shall be controlled by the provisions of this instruction on and after the issuance date(s). Separation proceedings initiated prior to the implementation date(s) shall be concluded under the guidelines in effect at the time of commencement.

11. Forms

a. The following forms are available through normal Navy supply channels per NAVSUP P2002.

FORM NO.	TITLE	STOCK NO.
DD 214 (Rev 11-88)	Certificate of Release or Discharge from Active Duty	0102-LF-006-5500
DD 215 (Rev 7-79)	Correction of DD 214, Certificate of Release or Discharge from Active Duty	0102-LF-000-2150
DD 256N (May 50)	Navy Honorable Discharge Certificate	0102-LF-002-4203

b. PS 3800 (Receipt of Certified Mail), and PS 3811 (Domestic Return Receipt) are available from local post offices.



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Assistant Secretary of the Navy
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Distribution: (See next page)

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DEFINITIONS

1. Administrative Board. A board appointed to (1) determine the facts in a case; (2) issue findings based on those facts; (3) make recommendation concerning the retention, separation, or suspension of separation of a servicemember; and (4) make recommendation concerning the characterization of service or description of separation if separation or suspended separation is recommended.
2. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.
3. Broken Service. The service of a veteran whose last tour of duty or active duty for training was in any branch of naval or military service of the United States who has been discharged for more than 24 hours and who completed a minimum of 12 consecutive weeks of active duty or active duty for training unless such enlistment results in continuous service, as defined below.
4. Commander/Commanding Officer. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area that under pertinent official directives is recognized as a "command."
5. Continuous Service
 - a. Service in the Regular Navy or Naval Reserve or the Regular Marine Corps or Marine Corps Reserve which is continued by reenlistment within 3 months following discharge or release from active duty. A servicemember who is reenlisted on the same day of the month 3 calendar months from date of discharge or release from active duty is reenlisted "within 3 months."
 - b. Reenlistment within 6 months following discharge or release from active duty provided the servicemember is classified RE-R1, recommended for Preferred Reenlistment, and holds a rating listed on current Career Reenlistment Objectives Lists. A servicemember who reenlisted on the same day of the month 6 calendar months from date of discharge or release from active duty is reenlisted "within 6 months."
6. Convening Authority. A commander or commanding officer empowered to convene a special court-martial has the authority to convene an Administrative Board.
7. Discharge. Complete severance from all military status gained by the enlistment or induction concerned.

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8. Enlisted Performance Evaluation System. The formal service-wide rating system established in the United States Navy and the United States Marine Corps by the Chief of Naval Operations and the Commandant of the Marine Corps, respectively, under the requirement for Records of Fitness as contained in Article 1129, United States Navy Regulations (1990) (Record of Fitness) (reference (f)). It is used to record an individual's fitness for service, performance of duties and conduct based on alphanumeric scores accumulated in a formal service-wide rating system. The performance and conduct scores of an individual, as recorded during the current enlistment, are used as a guide in determining the characterization of service, reenlistment eligibility, and other personnel management purposes as established in appropriate regulations issued by authority of the Chief of Naval Operations or Commandant of the Marine Corps.

9. Entry Level Status. Upon enlistment, a servicemember qualifies for entry level status during (1) the first 180 days of continuous active military service or (2) the first 180 days of continuous active service after a service break of more than 92 days of active service. A servicemember of a Reserve component who is not on active duty or who is serving under a call or order to active duty for 180 days or less begins entry level status upon enlistment in a Reserve component. Entry level status for such a servicemember of a Reserve component terminates either (a) 180 days after beginning training if the servicemember is ordered to active duty for training for one continuous period of 180 days or more; or (b) 90 days after the beginning of the second period of active duty training if the servicemember is ordered to active duty for training under a program that splits the training into two or more separate periods of active duty. For the purposes of characterization of service or description of separation, the servicemember's status is determined by the date of notification as to the initiation of separation proceedings.

10. General Court-Martial Convening Authority. Article 22 of the UCMJ (reference (d)) and section 0120a of JAGINST 5800.7C (reference (g)) define and list general court-martial convening authorities.

11. Homosexual. A person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

12. Homosexual Act

a. Any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires; or

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b. Any bodily contact that a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in paragraph 12a.

13. Homosexual Conduct. A homosexual act, a statement by the servicemember that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

14. Homosexual Marriage or Attempted Marriage. Marriage or attempted marriage to a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved).

15. Individual Counsel. Counsel requested specifically by the respondent to represent him or her before an Administrative Board in lieu of the appointed counsel.

16. Legal Advisor. A lawyer, uniformed or civilian, under the professional supervision of either the Judge Advocate General or General Counsel of the Navy, certified under, or otherwise meeting the professional requirements, of article 27(b) of the UCMJ (reference (d)).

17. Military. As used in this instruction, the term refers to the Army, Navy, Air Force, Marine Corps and their respective Reserve components, as well as the U.S. Coast Guard when acting under the authority of the Department of the Navy.

18. Military Record. An individual's overall performance while a member of a military service, including personal conduct and performance of duty.

19. Naval. As used in this instruction, the term means of, relating or belonging to, connected with, or used in the Navy or Marine Corps, including their Reserve components.

20. Pattern of Misconduct. A minimum of two non-judicial punishments, court-martials, or civil convictions, or combination of any two or more of these proceedings within a servicemember's current enlistment.

21. Propensity. Propensity to engage in homosexual acts means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts.

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22. Qualified Counsel or Counsel. Counsel qualified per article 27(b) of the UCMJ (reference (d)) and who does not have any direct responsibility for advising the convening authority or separation authority on the proceedings involving the respondent.
23. Release from Active Duty. Termination of active-duty status and transfer or reversion to a Reserve component not on active duty, including transfer to the IRR.
24. Respondent. A servicemember who has been notified that action has been initiated to separate him or her.
25. Separation. A general term that includes discharge, release from active duty, release from custody and control of the Armed Forces, transfer to the IRR, and similar changes in Active or Reserve status.
26. Separation Authority. An official authorized by the Secretary of the Navy to take final action with respect to a specified type of separation.
27. Servicemember. As used in this instruction, a man or woman who is enlisted in the regular or Reserve component of the United States Navy or Marine Corps.
28. Service Record. The official history of a servicemember's service in a regular and/or Reserve component of the Navy or Marine Corps.
29. Sexual Orientation. An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.
30. Special Court-Martial Convening Authority. Article 23 of the UCMJ (reference (d)) and section 0120b of JAGINST 5800.7C (reference (g)) define and list special court-martial convening authorities.
31. Statement that a Member is a Homosexual or Bisexual or Words to that Effect. Language or behavior that a reasonable person would believe was intended to convey the statement that a person engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

ADMINISTRATIVE SEPARATION GUIDE

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PART 1

REASONS FOR SEPARATION

A. Expiration of Service Obligation

1. Basis. A servicemember may be separated upon expiration of enlistment or fulfillment of service obligation. This includes separation when the servicemember is within 30 days of the date of expiration of term of service under the following circumstances:

a. The servicemember is serving outside the continental United States (CONUS); or

b. The servicemember is a resident of a State, territory, or possession outside CONUS and is serving outside the his or her State, territory, or possession of residence.

2. Characterization or Description. Honorable, unless:

a. An Entry Level Separation is required under subsection C1 of part 3;

b. Characterization of service as General (under honorable conditions) is warranted under section B of part 3 on the basis of the Enlisted Performance Evaluation System; or

c. Another characterization is warranted upon discharge from the IRR under part 8.

B. Selected Changes in Service Obligations

1. Basis. A servicemember may be separated for the following reasons:

a. General demobilization or reduction in authorized strength.

b. Within 90 days of the date of expiration of active obligated service under the following conditions:

(1) when the servicemember's ship or mobile unit is about to deploy with the probability of not returning to the United States before the expiration of the servicemember's active obligated service, the servicemember may be separated within 5 days of the deployment date, when there would be insufficient

time to complete separation processing prior to servicemember's expiration of active obligated service if the servicemember returned to CONUS from the first overseas port-of-call;

(2) When the home port of a servicemember's ship or command changes, the servicemember may be separated within 5 days of the ship's/command departure for the new home port when there would be insufficient time to return the servicemember to the old home port for separation processing, or to complete separation processing at the new home port prior to servicemember's expiration of active obligated service;

(3) When a servicemember is awaiting separation at a separation activity for reason of expiration of active obligated service and has not indicated a desire to reenlist;

(4) When a servicemember is in temporary duty under treatment status or has been found physically qualified to resume full duty, regardless of duty status, with 3 months or less active obligated service remaining and who does not desire reenlistment;

(5) When enlistment or obligated service expires on a Saturday, Sunday, or holiday, or a day preceding a holiday, separation may be effective up to 3 days prior to expiration of active obligated service;

(6) Upon completion of a cruise, when the servicemember concerned extended his or her active obligated service for the express purpose of participating in or completing the cruise;

(7) When a ship or unit returns from extended deployment (6 months or more), separation may be effective up to 31 days prior to expiration of active obligated service;

(8) To permit a servicemember to return home during the Christmas and New Year holiday period. Except as indicated below, a servicemember whose expiration of active obligated service will occur between the third Monday of December of the current year and the first Monday of January of the following year, may be separated not earlier than the second Monday of December of the current year. Early separation under this subsection is not authorized for a servicemember:

(a) Who, in the judgment of the commanding officer, cannot be spared; or

- (b) Who does not desire early separation; or
- (c) Who is a reservist undergoing active duty for training; or
- (d) Whose expiration of active obligated service will occur during the period specified above as a result of any other early release program; or

(e) Who is scheduled for transfer to the Fleet Reserve/retired list;

(9) Upon returning from a permanent overseas duty station, a servicemember may request separation upon his or her return to CONUS: or

(10) When serving overseas, a servicemember who is entitled to and elects transportation to an area outside CONUS may request separation prior to arrival in CONUS.

c. Acceptance of an active duty commission or appointment, or acceptance into a program leading to such commission or appointment in any branch of the Military Services.

d. Immediate enlistment or reenlistment.

e. Interservice transfer of inactive reserves in accordance with DOD Directive 1205.5 (reference (h)).

2. Characterization or Description. Honorable, unless:

a. An Entry Level Separation is required under section C1 of part 3;

b. Characterization of service as General (under honorable conditions) is warranted under section B of part 3 on the basis of the Enlisted Performance Evaluation System; or

c. Another characterization is warranted upon discharge from the IRR under part 8.

C. Convenience of the Government (COG)

1. Basis. A servicemember may be separated for convenience of the government for the reasons set forth in subsection C4.

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2. Characterization or Description. Honorable, unless:

a. An Entry Level Separation is required under section C1 of part 3; or

b. Characterization of service as General (under honorable conditions) is warranted under section B of part 3 on the basis of the Enlisted Performance Evaluation System.

3. Procedures. The Notification Procedure (section B of part 4) shall be used, subject to procedures established in subsection C4.

4. Reasons

a. Early release to further education. A servicemember may be separated to attend an institution of higher education (college or university), vocational school or technical school. The requested separation shall be within 3 months of the servicemember's expiration of active obligated service and within this limitation, not earlier than 10 days prior to the class convening date as prescribed by the educational institution. Servicemembers desiring to move their families to a location near the school and servicemembers returning from deployment or an overseas duty station may be separated up to 30 days prior to the class convening date but, in each case, within 3 months of the expiration of active obligated service.

(1) The applicant for separation to attend higher education (college or university) shall provide documentary evidence which substantiates:

(a) Acceptance for enrollment in a specific school term. (A summer term may be used to fulfill this requirement.)

(b) Enrollment in a full-time course of instruction leading to an associate, baccalaureate, or higher degree.

(c) The registration and convening dates of class for the specified school term.

(d) The listing or approval for listing of the educational institution in the Education Directory for Postsecondary Education published yearly by the National Center for Education Statistics, Department of Education.

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(2) The applicant for separation to attend a vocational or technical school shall provide documentary evidence which substantiate:

(a) Acceptance for enrollment commencing with a specific school term in a full-time course of instruction of not less than 3 months duration. Correspondence courses do not meet these requirements.

(b) The registration and class convening dates for the specified school term.

(c) The approval of the vocational or technical school by the cognizant State Board for Vocational Education or is accredited by a nationally recognized accrediting agency or association listed by the U.S. Commissioner of Education.

(3) The applicant must demonstrate the ability and willingness to make the required payment of an entrance fee, if any, if servicemember has not already done so.

(4) The applicant must clearly establish that the specific school term for which he or she seeks release is academically the most opportune time to begin or resume his or her education and that delay of enrollment until normal expiration of service would cause undue handicap.

(5) Servicemember's performance of duty must have been such that he or she is deserving of consideration for early separation. Performance must meet honorable discharge criteria.

(6) Servicemembers in the following categories are not eligible for early release under this provision:

(a) Servicemembers whose services are essential to the mission of the command.

(b) Servicemembers who are ordered to active duty due to unsatisfactory participation in a selected Reserve unit.

(c) Aliens seeking to qualify for citizenship by completion of 3 years of active duty military service unless they are to be transferred to inactive duty in a reserve component.

(d) Servicemembers who are ordered to active duty for training for a period of 4 to 10 months.

b. Dependency or hardship

(1) Upon request of the servicemember and concurrence of the separation authority, separation may be directed when genuine dependency or undue hardship exists under the following circumstances:

(a) The hardship or dependency is not temporary;

(b) Conditions have arisen or have been aggravated to an excessive degree since entry into the Service, and the servicemember has made every reasonable effort to remedy the situation;

(c) The administrative separation will eliminate or materially alleviate the condition; and

(d) There are no other means of alleviation reasonably available.

(2) Undue hardship does not necessarily exist solely because of altered present or expected income, family separation, or other inconveniences normally incident to naval service.

c. Pregnancy or childbirth. A female servicemember may be separated on the basis of pregnancy or childbirth upon her request, unless retention is determined to be in the best interest of the naval service under section A of part 2.

d. Parenthood. A servicemember may be separated by reason of parenthood if as a result thereof it is determined under the guidance set forth in section A of part 2 that the member is unable satisfactorily to perform his or her duties or is unavailable for worldwide assignment or deployment. Prior to involuntary separation under this provision, the Notification Procedure (section B of part 4) shall be used. Separation processing may not be initiated until the servicemember has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

e. Conscientious objection. A servicemember may be separated if authorized per DOD Directive 1300.6 (reference (i)).

f. Separation of aliens. A servicemember who is an alien, an individual who is neither a natural born nor a naturalized citizen of the United States, may be separated upon

request with the concurrence of the separation authority, on the basis of being an alien who no longer wishes to serve.

g. Surviving family member. A servicemember may be separated if authorized per DoD Directive 1315.15 (reference (j)).

h. Other designated physical or mental conditions

(1) A servicemember may be separated on the basis of other designated physical or mental conditions, not amounting to Disability (section D), that potentially interfere with assignment to or performance of duty under the guidance set forth in section A of part 2. Such conditions may include but are not limited to chronic air or seasickness, enuresis, and somnambulism.

(2) Separation processing may not be initiated until the servicemember has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

(3) Nothing in this provision precludes separation of a servicemember who has such a condition under any other basis set forth under this section (Convenience of the Government) or for any other reason authorized by this instruction.

i. Personality disorder

(1) Separation on the basis of personality disorder is authorized only if a psychiatrist or psychologist concludes that per article 15-23 of the Manual of the Medical Department (reference (k)), the servicemember has a personality disorder that is so severe that his or her ability to function effectively in the naval environment is significantly impaired. Personality disorders are described in the Diagnostic and Statistical Manual (DSM-IV) of Mental Disorders (reference (l)).

(2) Separation processing may not be initiated until the servicemember has been formally counseled concerning his or her deficiencies and afforded an opportunity to overcome the deficiencies documented in counseling or personnel records. Counseling is not required if the servicemember is determined by competent medical authority to be an immediate danger to himself or others.

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(3) Separation for personality disorder is not appropriate when separation is warranted under sections A through P of this part. For example, if separation is warranted on the basis of unsatisfactory performance (section G) or misconduct (section K), the member should not be separated under this section regardless of the existence of a personality disorder.

j. Review action. A servicemember may be separated if he or she is placed on appellate leave awaiting review of a punitive discharge, per DoD Directive 1327.5 (reference (m)), and whose punitive discharge is set aside, suspended, remitted or disapproved during the review process.

k. Reservist becomes a minister. A servicemember of the Reserve who becomes a regular or ordained minister of a religious faith group is entitled, upon his or her request, to discharge from the Naval or Marine Corps Reserve per 10 U.S.C. 1162 (reference (b)), if the servicemember satisfactorily establishes that:

(1) He or she will or does regularly engage in religious preaching and teaching;

(2) The ministry is or will be his or her main and primary calling - a vocation rather than avocation;

(3) His or her standing in the congregation is or will be recognized as that of a minister or leader of a group of lesser members; and

(4) His or her religious faith group is organized exclusively or substantially for religious purposes.

D. Disability.

1. Basis A servicemember may be separated for disability per SECNAVINST 1850.4C (reference (n)).

2. Characterization. Honorable, unless:

a. An Entry Level Separation is required under section C1 or part 3, or

b. Characterization of service as General (under honorable conditions) is warranted under Section B or part 3.

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3. Procedures. When characterization of service is General but is based on factors in the service record other than the Enlisted Performance Evaluation System, the servicemember shall be notified prior to characterization of the specific factors in the service record that warrant such a characterization, and the Notification Procedure shall be used. However, where the characterization is based on the Enlisted Performance Evaluation System, the Notification Procedure shall not be used.

E. Defective Enlistments and Inductions

1. Minority

a. Basis

(1) Under age 17. If a servicemember is under the age of 17, the enlistment is void, and the servicemember shall be separated.

(2) Age 17. A servicemember shall be separated under 10 U.S.C. 1170 (reference (b)), in the following circumstances except when he or she is retained for the purpose of trial by court-martial:

(a) There is satisfactory evidence, such as a copy of the member's birth certificate showing that the servicemember is under 18 years of age;

(b) The servicemember enlisted without the written consent of his or her parent or guardian; and

(c) An application for the servicemember's separation is submitted to the Secretary of the Navy by the parent or guardian within 90 days of his or her enlistment.

b. Description of Separation. A servicemember separated under subsection E1a(1) shall receive an order of release from custody and control of the naval service (by reason of void enlistment or induction). The separation of a servicemember under subsection E1a(2) shall be described as an Entry Level Separation.

c. Procedures. The Notification Procedure (section B of part 4) shall be used.

2. Erroneous

a. Basis. A servicemember may be separated on the basis of an erroneous enlistment, induction, or extension of enlistment under the guidance set forth in section A of part 2. An enlistment, induction, or extension of enlistment is erroneous in the following circumstances, if:

(1) It would not have occurred had the relevant facts been known by the Department of the Navy or had appropriate directives been followed;

(2) It was not the result of fraudulent conduct on the part of the individual; and

(3) The defect is unchanged in material respects.

b. Characterization or Description. Honorable, unless an Entry Level Separation or an order of release from the custody and control of the naval service (by reason of void enlistment or induction) is required under section C of part 3.

c. Procedures

(1) If the commanding officer recommends that the individual be retained in the naval service, the initiation of separation processing is not required in the following circumstances:

(a) The defect is no longer present; or

(b) The defect can be waived and a waiver is obtained from the general court-martial convening authority, or higher.

(2) If separation processing is initiated, the Notification Procedure (section B of part 4) shall be used.

3. Defective Enlistment Agreements

a. Basis. A defective enlistment agreement exists in the following circumstances:

(1) As a result of a material misrepresentation by recruiting personnel upon which the servicemember reasonably relied, the servicemember was induced to enlist with a commitment for which he or she was not qualified;

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(2) The servicemember received a written enlistment commitment from recruiting personnel for which he or she was qualified, but which cannot be fulfilled by the naval service; or

(3) The enlistment was involuntary, i.e., one that was induced by fraud or duress or undue influence and not the product of a free and unconstrained choice as exemplified by:

(a) Enlistment of an individual who lacks the capacity to understand the significance of enlisting in the armed services; or

(b) Enlistment of an individual whose enlistment is involuntary by reason of coercion resulting from being presented with the option of either enlisting or being subjected to a sentence of confinement by a court of competent jurisdiction.

b. Characterization or Description. Honorable, unless an Entry Level Separation or an order of release from the custody and control of the naval service (by reason of void enlistment) is required under section C of part 3.

c. Procedures

(1) This provision does not bar appropriate disciplinary action or other administrative separation proceedings regardless of when the defect is raised. Separation is appropriate under this provision only in the following circumstances:

(a) The servicemember did not knowingly participate in creation of the defective enlistment;

(b) The servicemember brings the defect to the attention of appropriate authorities within 30 days after the defect is discovered or reasonably should have been discovered by the servicemember; and

(c) The servicemember requests separation instead of other authorized corrective action.

(2) If separation processing is initiated, the Notification Procedure (section B of part 4) shall be used.

4. Fraudulent Entry Into the Naval Service

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a. Basis. A servicemember may be separated under guidance in section A of part 2 on the basis of procurement of a fraudulent enlistment, induction, or period of naval service through any deliberate material misrepresentation, omission, or concealment that, if known at the time of enlistment, induction, or entry into a period of naval service might have resulted in rejection.

b. Characterization or Description. Honorable, unless:

(1) An Entry Level Separation is required under section C1 of part 3;

(2) Characterization of service as General (under honorable conditions) is warranted under section B of part 3; or

(3) The Administrative Board Procedure was used, then characterization of service could result in Under Other Than Honorable Conditions.

c. Procedures

(1) The Notification Procedure (section B of part 4) shall be used except when the fraud involves concealment of a prior separation in which service was not characterized as Honorable, then the Administrative Board Procedure (section C of part 4) shall be used.

(2) When the sole reason for separation is fraudulent entry, suspension of separation (section B of part 2) is not authorized. When there are approved reasons for separation in addition to fraudulent entry, suspension of separation is authorized only in the following circumstances:

(a) A waiver of the fraudulent entry is approved;
and

(b) The suspension pertains to reasons for separation other than the fraudulent entry.

(3) If the command recommends the servicemember be retained in the naval service, the initiation of separation processing is unnecessary in the following circumstances:

(a) The defect is no longer present; or

(b) The defect can be waived and a waiver is obtained from the general court-martial convening authority, or higher.

(4) If the material misrepresentation includes preservice or prior service homosexual conduct, the standards and procedures of section H, shall be applied in processing.

5. Separation from the Delayed Entry Program (DEP)

a. Basis

(1) An individual in the Delayed Entry Program (DEP) (inactive Reserve status) will be separated prior to coming on active duty when it is determined that he or she no longer meets the qualifications for enlistment as prescribed in DOD Directive 1304.26 (reference (c)), and when an individual's request for separation is approved by Commander, Navy Recruiting Command.

(2) Commanding officers of Navy Recruiting Districts are authorized to separate an individual of the DEP under this section with an entry level description of separation.

b. Description of Separation. Entry Level Separation.

c. Procedures. Personnel shall be notified in writing of the following:

(1) Basis of the disqualification. In the case of disqualification due to homosexual conduct, the basis for disqualification shall read:

Homosexual conduct as evidenced by:

(a) Member's statement that he or she is a homosexual or bisexual, or words to the effect, which creates a rebuttable presumption that he or she engages in, attempts to engage in, has the propensity to engage in, or intends to engage in homosexual acts;

(b) Member engaging in, attempting to engage in, or soliciting another to engage in a homosexual act or acts; and/or

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(c) Member's marriage or attempted marriage to a person known to be of the same biological sex.

(2) That the description of separation will be entry level.

(3) That the member has the right to submit evidence on his or her behalf that he/she does not engage in, attempt to engage in, or have a propensity to engage in homosexual acts.

d. The notice shall be delivered personally or sent by registered or certified mail, return receipt requested (or by an equivalent form of notice if such service is not available by the U.S. mail at an address outside the United States). If the person fails to acknowledge receipt of notice, the individual who mails the notification shall prepare a Sworn Affidavit of Service by Mail (see subsection F of part 8) that shall be inserted in the file along with Postal Service Forms 3800 and 3811.

F. Entry Level Performance and Conduct

1. Basis

a. A servicemember may be separated while in entry level status when it is determined under the guidance in section A of part 2 that the servicemember is unqualified for further naval service by reason of unsatisfactory performance or conduct (or both), as evidenced by inability, lack of reasonable effort, failure to adapt to the naval environment, or minor disciplinary infractions.

b. When separation of a servicemember in entry level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both), the servicemember normally should be separated under this section. Nothing in this provision precludes separation under another provision of this instruction when such separation is authorized and warranted by the circumstances of the case.

2. Counseling and Rehabilitation. Separation processing may not be initiated until the servicemember has been counseled formally concerning those deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

3. Description of Separation. Entry Level Separation.

4. Procedures. The Notification Procedure (section B of part 4) shall be used.

G. Unsatisfactory Performance

1. Basis. A servicemember may be separated when it is determined per guidance in section A of part 2 that he or she is unqualified for further naval service by reason of unsatisfactory performance. This reason shall not be used if the servicemember is in entry level status (paragraph 9 of enclosure 1).

2. Counseling and Rehabilitation. Separation processing may not be initiated until the servicemember has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. Counseling and rehabilitation requirements are of particular importance with respect to this reason for separation. Because naval service is a calling different from any civilian occupation, a servicemember should not be separated when unsatisfactory performance is the sole reason unless there have been efforts at rehabilitation.

3. Characterization or Description. Honorable, unless:

a. An Entry Level Separation is required under section C1 of part 3; or

b. Characterization of service as General (under honorable conditions) is warranted under section B of part 3.

4. Procedures. The Notification Procedure (section B of part 4) shall be used.

H. Homosexual Conduct

1. Basis

a. Homosexual conduct is grounds for separation from the naval service. Homosexual conduct includes homosexual acts, a statement by a servicemember that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage. A statement by a servicemember that demonstrates a propensity or intent to engage in homosexual acts is grounds for separation not because it reflects the person's sexual orientation, but because the statement indicates a

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likelihood that the individual engages in or will engage in homosexual acts. A person's sexual orientation is considered a personal and private matter, and is not a bar to continued service unless manifested by homosexual conduct as defined in paragraph 13 of enclosure (1).

b. A servicemember shall be separated by reason of homosexual conduct if one or more of the following approved findings is made:

(1) The servicemember has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts, unless there are approved further findings that:

(a) Such acts are a departure from the servicemember's usual and customary behavior;

(b) Such acts, under all of the circumstances, are unlikely to recur;

(c) Such acts were not accomplished by use of force, coercion, or intimidation;

(d) Under the particular circumstances of the case, the servicemember's continued presence in the naval service is consistent with the interest of the naval service in proper discipline, good order, and morale; and

(e) The servicemember does not have a propensity or intent to engage in homosexual acts.

(2) The servicemember has made a statement that he or she is a homosexual or bisexual, or words to that effect, unless there is a further approved finding that the individual has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. A statement by a servicemember that he or she is a homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the member engages in, attempts to engage in, has a propensity to engage in or intends to engage in homosexual acts. The servicemember shall be advised of this presumption and given the opportunity to rebut the presumption by presenting evidence demonstrating that he or she does not engage in, attempt to engage in, have a propensity to engage in, or intent to engage in homosexual acts. Propensity to engage in homosexual acts means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual

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acts. In determining whether a servicemember has successfully rebutted the presumption that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts, some or all of the following may be considered:

(a) Whether the servicemember has engaged in homosexual acts;

(b) The servicemember's credibility;

(c) Testimony from others about the servicemember's past conduct, character, and credibility;

(d) The nature and circumstances of the servicemember's statement; and

(e) Any other evidence relevant to whether the servicemember is likely to engage in homosexual acts.

(This list is not exhaustive. Any other relevant evidence may also be considered.)

(3) The servicemember has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved).

2. Burden of Proof. See subsections H4e and H4f for guidance as to the burden of proof and when a finding regarding retention is required.

3. Characterization or Description. Characterization of service or description of separation shall be in accordance with guidance in part 3. When the sole basis for separation is homosexual conduct, a characterization Under Other Than Honorable Conditions may be issued only if such a characterization is warranted under part 3 and there is a finding that during the current term of service the servicemember attempted, solicited, or committed a homosexual act in the following circumstances:

a. By using force, coercion, or intimidation;

b. With a person under 16 years of age;

c. With a subordinate in circumstances that violate customary military superior-subordinate relationships;

d. Openly in public view;

- e. For compensation;
- f. Aboard a military vessel or aircraft; or
- g. In another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

4. Procedures. The Administrative Board Procedure (section C of part 4) shall be used, subject to the following guidance:

a. Separation processing shall be initiated if there is probable cause to believe separation is warranted under subsection H1b. Fact-finding procedures for inquiries into homosexual conduct are in subsection H5.

b. The Administrative Board shall follow the procedures set forth in section C of part 4 except with respect to the following matters:

(1) If the Board finds that one or more of the circumstances authorizing separation under subsections H1b is supported by the evidence, the Board shall recommend separation unless the Administrative Board finds that retention is warranted under the limited circumstances described in subsections H1b(1)(a) through (e).

(2) If the Board does not find sufficient evidence that one or more of the circumstances authorizing separation under subsection H1b has occurred, the Board shall recommend retention, unless the case involves another basis for separation of which the servicemember has been duly notified.

c. In any case in which characterization of service under Other Than Honorable Conditions is not authorized, the separation authority may be exercised by an officer designated under part 6.

d. The separation authority shall dispose of the case according to the following provisions:

(1) If the Board recommends retention, the separation authority shall take one of the following actions:

(a) Approve the finding and direct retention; or

(b) Forward the case to the Secretary of the Navy with a recommendation that the Secretary separate the servicemember under the Secretary's Plenary Authority.

(2) If the Board recommends separation, the separation authority shall take one of the following actions:

(a) Approve the finding and direct separation; or

(b) Disapprove the finding on the basis of the following considerations:

1. There is insufficient evidence to support the finding; or

2. Retention is warranted under the limited circumstances described in subsections H1b(1)(a) through (e).

(3) If there has been a waiver of Board proceedings, the separation authority shall dispose of the case in accordance with the following provisions:

(a) If the separation authority determines that there is not sufficient evidence to support separation under subsection H1b, the separation authority shall direct retention unless there is another basis for separation of which the servicemember has been duly notified.

(b) If the separation authority determines that one or more of the circumstances authorizing separation under subsections H1b has occurred, the servicemember shall be separated unless retention is warranted under the limited circumstances described in subsections H1b(1)(a) through (e).

e. The servicemember shall bear the burden of proving throughout the proceeding, by a preponderance of the evidence, that retention is warranted under the limited circumstances described in subsections H1b(1)(a) through (e).

f. Findings regarding whether or not retention is warranted under the limited circumstances of subsections H1b(1)(a) through (e) are required if the servicemember clearly and specifically raises such limited circumstances.

g. Nothing in these procedures:

(1) Limits the authority of the Secretary of the Navy to take appropriate action in a case to ensure that there has been compliance with this instruction;

(2) Requires that a servicemember be processed for separation when a determination is made that:

(a) The servicemember engaged in acts, made statements, or married or attempted to marry a person known to be of the same biological sex for the purpose of avoiding or terminating military service; and

(b) Separation of the servicemember would not be in the best interest of the naval service.

(3) Precludes retention of a servicemember for a limited period of time in the interest of national security as authorized by the Secretary of the Navy;

(4) Authorizes a servicemember to seek Secretarial review unless authorized in procedures issued by the Secretary of the Navy;

(5) Precludes separation in appropriate circumstances for another reason in this instruction; or

(6) Precludes trial by court-martial in appropriate cases.

5. Fact-Finding

a. Responsibility

(1) Only the servicemember's commander as defined in paragraph 4 of enclosure (1) is authorized to initiate fact-finding inquiries involving homosexual conduct. A commander may initiate a fact-finding inquiry only when he or she has received credible information that there is basis for discharge. Commanders are responsible for ensuring that inquiries are conducted properly and that no abuse of authority occurs.

(2) A fact-finding inquiry may be conducted by the commander personally or by a person he or she appoints. It may consist of an examination of the information reported or a more extensive investigation, as necessary.

(3) The inquiry should gather all credible information that directly relates to the grounds for possible separation. Inquiries shall be limited to the factual circumstances directly relevant to the specific allegations.

(4) If a commander has credible evidence of possible criminal conduct, he or she shall follow the procedures outlined in the Manual for Courts-Martial and implementing regulations issued by the Secretary of the Navy.

(5) The provisions of subsection H5 do not apply to the activities of the Naval Criminal Investigative Service and other DOD law enforcement organizations, which are governed by DOD Instruction 5505.8 (reference (q)).

b. Basis for conducting inquiries:

(1) A commander will initiate an inquiry only if he or she has credible information that there is a basis for discharge. Credible information exists when the information, considering its source and the surrounding circumstances, supports a reasonable belief that there is a basis for discharge. It requires a determination based on articulable facts, not just a belief or suspicion.

(2) A basis for discharge exists if:

(a) The servicemember has engaged in a homosexual act.

(b) The servicemember has said that he or she is a homosexual or bisexual, or made some other statement that indicates a propensity or intent to engage in homosexual acts; or

(c) The servicemember has married or attempted to marry a person of the same sex.

(3) Credible information does not exist, for example, when:

(a) The individual is suspected of engaging in homosexual conduct, but there is no credible information, as described, to support that suspicion; or

(b) The only information is the opinions of others that a servicemember is homosexual; or

(c) The inquiry would be based on rumor, suspicion, or capricious claims concerning a servicemember's sexual orientation;

(d) The only information known is an associational activity such as going to a homosexual bar, possessing or reading homosexual publications, associating with known homosexuals, or marching in a homosexual rights rally in civilian clothes. Such activity, in and of itself, does not provide evidence of homosexual conduct.

(4) Credible information exists, for example, when:

(a) A reliable person states that he or she observed or heard a servicemember engaging in homosexual acts, or saying that he or she is homosexual or bisexual or is married to a member of the same sex; or

(b) A reliable person states he or she heard, observed, or discovered a servicemember make a spoken or written statement which a reasonable person would believe was intended to convey the fact that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts; or

(c) A reliable person states he or she observed behavior that amounts to a non-verbal statement by a servicemember that he or she is a homosexual or bisexual; i.e., behavior that a reasonable person would believe was intended to convey the statement that the servicemember engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

c. Procedures

(1) Informal fact-finding inquiries and administrative separation procedures are the preferred method of addressing homosexual conduct. This does not prevent disciplinary action or trial by court-martial when appropriate.

(2) Commanders shall exercise sound discretion regarding when credible information exists. They shall examine the information and decide whether an inquiry is warranted or whether no action should be taken.

(3) Commanders or appointed inquiry officials shall not ask, and the servicemember shall not be asked to reveal, whether he or she is a heterosexual, homosexual, or bisexual. However, upon receipt of credible information of homosexual

conduct (as defined in paragraph 13 of enclosure (1)), commanders or appointed inquiry officials may ask servicemembers if they engaged in such conduct. But the servicemember should first be advised of the DOD policy (reference (a)) on homosexual conduct and his or her rights under UCMJ, article 31, if applicable. Should the individual choose not to discuss the matter further, the commander should consider other available information. Nothing in this provision precludes questioning a person about any information provided by them in the course of the fact-finding inquiry or any related proceedings.

(4) At any given point of the inquiry, the commander or appointed inquiry official must be able to clearly and specifically explain which grounds for separation he or she is attempting to verify and how the information being collected relates to those specific separation grounds.

(5) A statement by a servicemember that he or she is homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the servicemember engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The servicemember shall be given the opportunity to present evidence demonstrating that he or she does not engage in, or attempt to engage in, or have a propensity or intent to engage in homosexual acts.

(6) The servicemember bears the burden of proving, by a preponderance of evidence, that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

(7) The above procedures create no substantive or procedural rights.

I. Drug Abuse Rehabilitation Failure

1. Basis

a. A servicemember who has been referred to a program of rehabilitation for personal drug abuse may be separated for failure through inability or refusal to participate in, cooperate in, or successfully complete such a program in the following circumstances:

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(1) There is a lack of potential for continued naval service; or

(2) Long term rehabilitation is determined necessary and the servicemember is transferred to a civilian medical facility for rehabilitation.

b. Nothing in this provision precludes separation of a servicemember who has been referred to such a program under any other provision of this instruction in appropriate cases.

2. Characterization or Description. Honorable, unless:

a. An Entry Level Separation is required under section C1 of part 3; or

b. Characterization of service as General (under honorable conditions) is warranted under section B of part 3.

3. Procedures. The Notification Procedure (section B of part 4) shall be used.

J. Alcohol Abuse Rehabilitation Failure

1. Basis

a. A servicemember who has been referred to a program of rehabilitation for personal alcohol abuse may be separated for failure through inability or refusal to participate in, cooperate in, or successfully complete such a program in the following circumstances:

(1) There is a lack of potential for continued naval service; or

(2) Long term rehabilitation is determined necessary and the servicemember is transferred to a civilian medical facility for rehabilitation.

b. Nothing in this provision precludes separation of a servicemember who has been referred to such a program under any other provision of this instruction in appropriate cases.

2. Characterization or Description. Honorable, unless:

a. An Entry Level Separation is required under section C1 of part 3; or

b. Characterization of service as General (under honorable conditions) is warranted under section B of part 3.

3. Procedures. The Notification Procedure (section B of part 4) shall be used.

K. Misconduct

1. Basis

a. Reasons. A servicemember may be separated for misconduct when it is determined under the guidance set forth in section A of part 2 that the servicemember is unqualified for further naval service by reason of one or more of the following:

(1) Minor disciplinary infractions. A pattern of misconduct consisting solely of minor disciplinary infractions. If separation of a servicemember in entry level status is warranted solely by reason of minor disciplinary infractions, the action should be processed under Entry Level Performance and Conduct (section F of this part).

(2) A pattern of misconduct. A pattern of more serious misconduct consisting of two or more discreditable involvements with civil or naval authorities, or two or more instances of conduct prejudicial to good order and discipline within the current enlistment. Such a pattern may include both minor and more serious infractions, including the following:

1. An established pattern of involvement of a discreditable nature with civil or naval authorities;

2. an established pattern of minor unauthorized absences;

3. an established pattern of dishonorable failure to pay just debts; or

4. an established pattern of dishonorable failure to contribute adequate support to dependents or failure to comply with orders, decrees, or judgments of a civil court concerning support of dependents.

(3) Commission of a serious offense. Commission of a serious military or civilian offense if in the following circumstances:

(a) The specific circumstances of the offense warrant separation; and

(b) A punitive discharge would be authorized for the same or a closely related offense under the Manual for Courts-Martial (reference (r)).

(4) Civilian conviction

(a) Conviction by civilian authorities or action taken that is tantamount to a finding of guilty, including similar adjudications in juvenile proceedings, when the specific circumstances of the offense warrant separation, and the following conditions are present:

1. A punitive discharge would be authorized for the same or a closely related offense under the Manual for Courts-Martial (reference (r)); or

2. The sentence by civilian authorities includes confinement for 6 months or more without regard to suspension or probation.

(b) Separation processing may be initiated whether or not a servicemember has filed an appeal of a civilian conviction or has stated an intention to do so. Execution of an approved separation should be withheld pending outcome of the appeal or until the time for appeal has passed, but the member may be separated before final action on the appeal upon request of the member or upon direction of the Secretary of the Navy.

(5) Drug abuse. A servicemember may be separated for drug offenses per the drug abuse policy contained in SECNAVINST 5300.28B (reference (s)). The offenses may be one or more military offenses or convictions by civil authorities (including actions tantamount to findings of guilt).

b. Related separations. Homosexual conduct shall be processed under section H. Misconduct involving a fraudulent enlistment is considered under subsection E4, and misconduct involving drug abuse shall be considered only under subsection K1a(5).

2. Counseling and Rehabilitation. Separation processing for a pattern of misconduct or minor disciplinary infractions (subsections K1a(1) and (2) of this part) may not be initiated until the servicemember has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome

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those deficiencies as reflected in appropriate counseling or personnel records. If the sole basis of separation is a single offense (subsections K1a(3) and (5)) or a civilian conviction or a similar juvenile adjudication (subsections K1a(4) and (5)), the counseling and rehabilitation requirements are not applicable.

3. Characterization or Description

a. Administrative Board Procedure used. Other Than Honorable, unless characterization of service as General is warranted under section B of part 3.

b. Notification Procedure used. General.

c. For servicemembers who have completed entry level status, characterization of service as Honorable is not authorized unless the respondent's record is otherwise so meritorious that any other characterization would clearly be inappropriate. In such cases, separations for misconduct with an Honorable characterization of service must be approved by a commander exercising general court-martial convening authority, or higher authority. As exceptions to this requirement, special court-martial convening authorities may approve separations with service characterized as Honorable when (1) the sole evidence of misconduct is command-directed urinalysis results which cannot be used for characterization of service or (2) an administrative discharge board has recommended an Honorable discharge.

d. When characterization of service under Other Than Honorable is not warranted for a servicemember in entry level status, the separation shall be described as Entry Level Separation per section C1 of part 3.

4. Procedures. The Administrative Board Procedure (section C of part 4) shall be used; however, use of the Notification Procedure (section B of part 4) is authorized if characterization of service Under Other Than Honorable Conditions is not warranted under section B of part 3.

L. Separation in Lieu of Trial by Court-Martial

1. Basis. A servicemember may be separated upon request in lieu of trial by court-martial if charges have been preferred with respect to an offense for which a punitive discharge is authorized and it is determined that the servicemember is unqualified for further naval service under the guidance set forth in section A of part 2. This provision may not be used

when Rule for Courts-Martial (R.C.M.) 1003(d) of the Manual for Courts-Martial (reference (r)) provides the sole basis for a punitive discharge unless the charges have been referred to a court-martial empowered to adjudge a punitive discharge.

2. Characterization or Description

a. Other Than Honorable, unless characterization of service as General is warranted under the guidelines in section B of part 3.

b. For respondents who have completed entry level status, characterization of service as Honorable is not authorized unless the respondent's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

c. When characterization of service Under Other Than Honorable Conditions is not warranted for a servicemember in entry level status under section C1 of part 3, the separation shall be described as an Entry Level Separation.

3. Procedures

a. The request for discharge must be submitted in writing and signed by the servicemember.

b. The servicemember shall be afforded opportunity to consult with counsel qualified under article 27(b)(1) of the UCMJ (reference (d)). If he or she refuses to do so, counsel shall prepare a statement to this effect which shall be attached to the file, and the servicemember shall state that he or she has waived the right to consult with counsel.

c. Except when the servicemember has waived the right to counsel, the request shall be signed by counsel.

d. In the written request, the servicemember shall state that he or she understands the following:

(1) The elements of the offense or offenses charged;

(2) That characterization of service Under Other Than Honorable Conditions is authorized; and

(3) The adverse nature of such a characterization and possible consequences thereof.

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e. One or both of the following matters shall also be included in the request:

(1) An acknowledgment of guilt of one or more of the offenses or any lesser included offenses for which a punitive discharge is authorized; or

(2) A summary of the evidence or list of documents (or copies thereof) provided to the servicemember pertaining to the offenses for which a punitive discharge is authorized.

f. The separation authority shall be a commander exercising general court-martial jurisdiction or higher authority. As an exception, the special courts-martial convening authorities may approve requests for discharge in the case of enlisted members who have been absent without leave for more than 30 days, have been dropped from the rolls of their units as absent in desertion, have been returned to military control, are assigned to a regional personnel control/separation processing facility, and are charged only with being absent without leave for more than 30 days.

g. Statements by the servicemember or his or her counsel submitted in connection with a request under this subsection are not admissible against the servicemember in a court-martial except as authorized under Military Rule of Evidence 410, Manual for Courts-Martial (reference (r)).

M. Security

1. Basis. When retention is clearly inconsistent with the interest of national security, a servicemember may be separated by reason of security per DOD 5200.2-R (reference (t)).

2. Characterization or Description

a. Administrative Board Procedure used. Other Than Honorable, unless characterization of service as General is warranted under section B of part 3.

b. Notification Procedure used. General.

c. For servicemembers who have completed entry level status, characterization of service as Honorable is not authorized unless the respondent's record is otherwise so meritorious that any other characterization would be clearly inappropriate.

d. When characterization of service under Other Than Honorable is not warranted for a servicemember in entry level status, the separation shall be described as Entry Level Separation per section C1 of part 3.

3. Procedures. The Administrative Board Procedure (section C of part 4) shall be used; however, use of the Notification Procedure (section B of part 4) is authorized if characterization of service Under Other Than Honorable Conditions is not warranted under section B of part 3.

N. Unsatisfactory Participation in the Ready Reserve

1. Basis. A servicemember may be separated for unsatisfactory participation in the Ready Reserve under criteria established in DoD Directive 1215.13 (reference (p)).

2. Characterization or Description. Characterization of service or description of a separation shall be in accordance with section B of part 3.

3. Procedures. The Administrative Board Procedure (section C of part 4) shall be used, except that the Notification Procedure (section B of part 4) may be used if characterization of service Under Other Than Honorable Conditions is not warranted under section B of part 3.

O. Weight Control Failure

1. Basis. A servicemember may be separated for failure to meet the weight control standards established under DOD Directive 1308.1 (reference (u)), when it is determined that he or she is unqualified for further naval service and meets both of the following conditions:

a. The servicemember is not medically diagnosed with a medical condition that precludes or interferes with weight control. Servicemembers with a medically diagnosed condition that precludes or interferes with weight control may be separated either through medical channels, if appropriate, or under the guidance in subsection C4h.

b. The servicemember fails to meet weight control standards, and the sole reason for separation is failure to meet the weight control standard.

2. Counseling and Rehabilitation. Separation processing may not be initiated until the servicemember has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

3. Characterization or Description. Honorable, unless:

a. An Entry Level Separation is required under section C1 of part 3; or

b. Characterization of service as General (under honorable conditions) is warranted under section B of part 3 on the basis of the Enlisted Performance Evaluation System.

4. Procedures. The Notification Procedure (section B of part 4) shall be used.

P. Secretarial Plenary Authority

1. Basis. Notwithstanding any limitation on separations provided in this instruction, the Secretary of the Navy may direct the separation of any servicemember prior to expiration of term of service after determining it to be in the best interests of the service.

2. Characterization or Description. Honorable, unless:

a. An Entry Level Separation is required under section C1 of part 3; or

b. Characterization of service as General (under honorable conditions) is warranted under section B of part 3.

3. Procedures. Prior to involuntary separation, the Notification Procedure (section B. of part 4) shall be used, except that portion of the procedure allowing the servicemember to request an Administrative Board (subsection B1g of part 4) which is not applicable when processing under this article.

Q. Reasons Established by the Department of the Navy. Should the need arise to separate servicemembers for a reason not established in this instruction, the Chief of Naval Operations or the Commandant of the Marine Corps may propose to the Assistant Secretary of the Navy (M&RA), the establishment of a new reason for separation to be included in this instruction. The recommendation shall contain:

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1. The basis for the requested separation.
2. Recommended processing procedure.
3. Recommended characterization of service or description for the proposed separation.
4. Whether counseling and rehabilitation requirements should be required prior to initiating separation processing.

The recommendation must be consistent with the guidance set forth in parts 1 through 9. If the proposal is such that approval by Assistant Secretary of Defense (ASD (P&R)) is required per DOD Directive 1332.14 (reference (a)), it will be prepared for submission to that office by the Assistant Secretary of the Navy (M&RA). Separation under any proposed reason will not be executed until the proposal has been approved.

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PART 2

GUIDELINES ON SEPARATION AND SUSPENSION OF SEPARATION

A. Separation

1. Scope. This general guidance applies when referenced in part 1. Further guidance is set forth under the specific reason for separation in part 1.

2. Guidance

a. There is a substantial investment in the training of persons enlisted or inducted into the naval service. As a general matter, reasonable effort at rehabilitation should be made prior to initiation of separation proceedings.

b. The potential for rehabilitation and further useful naval service shall be considered by the separation authority and, where applicable, the Administrative Board. If separation is warranted despite the potential for rehabilitation, consideration should be given to suspension of the separation, if authorized.

c. Counseling and rehabilitation efforts are a prerequisite to initiation of separation proceedings only insofar as expressly set forth under specific requirements for separation in part 1. An alleged or established inadequacy in previous rehabilitative efforts does not provide a legal bar to separation.

d. The following factors may be considered on the issue of retention or separation, depending on the circumstances of the case:

(1) The seriousness of the circumstances forming the basis for initiation of separation proceedings, and the effect of the servicemember's continued retention on military discipline, good order, and morale.

(2) The likelihood of continuation or recurrence of the circumstances forming the basis for initiation of separation proceedings.

(3) The likelihood that the servicemember will be a disruptive or undesirable influence in present or future duty assignments.

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(4) The ability of the servicemember to perform duties effectively in the present and in the future, including potential for advancement or leadership.

(5) The servicemember's rehabilitative potential.

(6) The servicemember's entire military record.

(a) This may include:

1. Past contributions to the Service, assignments, awards and decorations, evaluation ratings, and letters of commendation;

2. Letters of reprimand or admonition, counseling records, records of nonjudicial punishment, records of conviction by court-martial and records of involvement with civilian authorities; and

3. Any other matter deemed relevant by the board, if any, or the separation authority, based upon the specialized training, duties, and experience of persons entrusted by this instruction with recommendations and decisions on the issue of separation or retention.

(b) The following guidance applies to consideration of matter under subsection A2d(6)(a):

1. Adverse matter from a prior enlistment or period of military service, such as records of nonjudicial punishment and convictions by court-martial, may be considered only when such records would have a direct and strong probative value in determining whether separation is appropriate. The use of such records ordinarily shall be limited to those cases involving patterns of conduct manifested over an extended period of time.

2. Isolated incidents and events that are remote in time normally have little probative value in determining whether administrative separation should be effected.

e. A servicemember being considered for administrative separation processing who is Fleet Reserve/retired list eligible will, at his or her request, be allowed to transfer to the Fleet Reserve/retired list prior to initiating administrative separation processing. If the member declines to transfer to the Fleet Reserve/retired list, the convening authority shall proceed

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with administrative separation processing. If the member does elect, and does transfer to the Fleet Reserve/retired list, he or she may not be recalled to active duty except with the review and approval of the Chief of Naval Personnel or the Commandant of the Marine Corps.

3. Limitations on Separation Actions. A member may not be separated on the basis of the following:

a. Conduct that has been the subject of judicial proceedings resulting in the acquittal or action having the effect thereof except in the following circumstances:

(1) When such action is based upon a judicial determination not going to the guilt or innocence of the respondent; or

(2) When the judicial proceeding was conducted in a State or foreign court and the separation is approved by the Secretary of the Navy; or

(3) When the acquittal from the judicial proceedings was based on a finding of not guilty only by reason of lack of mental responsibility. Servicemembers in this category normally shall be separated under Secretarial Plenary Authority (section P of part 1) unless separation for Disability (section D of part 1) is appropriate.

b. Conduct that has been the subject of a prior Administrative Board in which the Board entered an approved finding that the evidence did not sustain the factual allegations concerning the conduct except when the conduct is the subject of a rehearing ordered on the basis of fraud or collusion; or

c. Conduct that has been the subject of an administrative separation proceeding resulting in a final determination by a separation authority that the servicemember should be retained, except in the following circumstances:

(1) When there is subsequent conduct or performance forming the basis, in whole or in part, for a new proceeding;

(2) When there is new or newly discovered evidence that was not reasonably available at the time of the prior proceeding; or

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(3) When the conduct is the subject of a rehearing ordered on the basis of fraud or collusion.

B. Suspension of Separation

1. Suspension

a. Unless prohibited by this instruction, a separation may be suspended for a specified period of not more than 12 months by the separation authority or higher authority if the circumstances of the case indicate a reasonable likelihood of rehabilitation.

b. During the period of suspension, the servicemember shall be afforded an opportunity to meet appropriate standards of conduct and duty performance.

c. Unless sooner vacated or remitted, execution of the approved separation shall be remitted upon completion of the probationary period, upon termination of the servicemember's enlistment or period of obligated service, or upon decision of the separation authority that the goal of rehabilitation has been achieved.

2. Action During the Period of Suspension

a. During the period of suspension, if there are further grounds for separation under part 1, one or more of the following actions may be taken:

(1) Disciplinary action;

(2) New administrative action; or

(3) Vacation of the suspension accompanied by execution of the separation if the servicemember engages in conduct similar to that for which separation was approved (but suspended) or otherwise fails to meet appropriate standards of conduct and duty performance.

b. Prior to vacation of a suspension, the member shall be notified in writing of the basis for the action and shall be afforded the opportunity to consult with counsel (as provided in subsection B1f of part 4) and to submit a statement in writing to the separation authority. The respondent shall be provided a reasonable period of time, but not less than 2 working days, to

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act on the notice. If the respondent identifies specific legal issues for consideration by the separation authority, the matter shall be reviewed by a judge advocate or civilian lawyer employed by the government prior to final action by the separation authority.

PART 3

GUIDELINES ON CHARACTERIZATION OF SERVICE AND
UNCHARACTERIZED SEPARATIONS

A. Types of Characterization or Description

1. At separation, the following types of characterization of service or description of separation are authorized under this instruction:

a. Separation with characterization of service as Honorable, General (under honorable conditions), or Under Other Than Honorable Conditions.

b. Entry Level Separation.

c. Order of release from the custody and control of the Military Services by reason of void enlistment or induction.

d. Separation by being dropped from the rolls of the naval service.

2. Any of the types of separation listed in this section may be used in appropriate circumstances unless a limitation is set forth in this section or in part 1 (Reasons for Separation).

B. Characterization of Service

1. General Considerations

a. Characterization at separation shall be based upon the quality of the servicemember's enlisted service, including the reason for separation and guidance in subsection B2, subject to the limitations set forth under various reasons for separation in part 1. The quality of service will be determined in accordance with standards of acceptable personal conduct and performance of duty for naval personnel. These standards are found in articles 1-140 of the UCMJ (reference (d)), directives and regulations issued by DOD and the Department of the Navy, and the time-honored customs and traditions of naval service.

b. The quality of service of a servicemember on active duty or active duty for training is affected adversely by conduct that is of a nature to bring discredit on the naval service or is prejudicial to good order and discipline, regardless of whether the conduct is subject to UCMJ jurisdiction. Characterization

may be based on conduct in the civilian community, and the burden is on the respondent to demonstrate that such conduct did not adversely affect the respondent's service.

c. The reasons for separation, including the specific circumstances that form the basis for the separation, shall be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior rather than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

d. Due consideration shall be given to the servicemember's age, length of service, grade, aptitude, physical and mental condition, and the standards of acceptable conduct and performance of duty.

2. Types of Characterization

a. Honorable. The Honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for naval personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate. In the case of an Honorable Discharge, an Honorable Discharge Certificate (DD 256) will be awarded and a notation will be made on the appropriate copies of the DD 214/5 per DOD Directive 1336.1 reference (v)).

b. General (under honorable conditions). If a member's service has been honest and faithful, it is appropriate to characterize that service under honorable conditions. Characterization of service as General (under honorable conditions) is warranted when significant negative aspects of the servicemember's conduct or performance of duty outweigh positive aspects of his or her naval record.

c. Under Other Than Honorable Conditions

(1) This characterization may be issued in the following circumstances:

(a) When the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of servicemembers of the naval service.

(b) When the reason for separation is based upon one or more acts or omissions that constitute a significant

departure from the conduct expected of servicemembers of the naval service. Examples of factors that may be considered include the use of force or violence to produce serious bodily injury or death, abuse of a special position of trust, disregard by a superior of customary superior-subordinate relationships, acts or omissions that endanger the security of the United States or the health and welfare of other servicemembers of the Military Services, those punishable by punitive discharges, extended unauthorized absence, drug abuse, drug distribution (trafficking) and deliberate acts or omissions that seriously endanger the health and safety of other persons.

(c) This characterization is authorized only if the servicemember has been afforded the opportunity to request an Administrative Board, except as provided in section L of part 1 (Separation in Lieu of Trial by Court-Martial).

3. Limitations on Characterization. Except as otherwise provided in this subsection, characterization will be determined solely by the servicemember's enlisted service record during the current enlistment or period of service to which the separation pertains, plus any extensions thereof prescribed by law or regulation or effected with the consent of the member.

a. Prior service activities, including records of conviction by court-martial, records of absence without leave, or commission of other offenses shall not be considered on the issue of characterization. To the extent that such matters are considered on the issue of retention or separation (subsection A.2. of this part), the record of proceedings may reflect express direction that such information shall not be considered on the issue of characterization.

b. Preservice activities may not be considered on the issue of characterization except as follows: in a proceeding concerning fraudulent entry into the naval service (subsection E4 of part 1), evidence of preservice misrepresentations about matters that would have precluded, postponed, or otherwise affected the servicemember's eligibility for enlistment or induction may be considered on the issue of characterization.

c. The limitations in subsection A3 of this part, above, as to matters that may be considered on the issue of separation are applicable to matters that may be considered on the issue of characterization.

d. Conduct in the civilian community of a servicemember of a Reserve component who is not on active duty or active duty for training may form the basis for characterization Under Other Than Honorable Conditions only if such conduct directly affects the performance of military duties. Such conduct may form the basis of characterization as General (under honorable conditions) only if such conduct has an adverse impact on the overall effectiveness of the service, including morale and efficiency.

e. A servicemember's voluntary submission to a DOD treatment and rehabilitation program and voluntarily disclosed evidence of prior personal drug use by the servicemember as part of a course of treatment in such a program may not be used against him or her on the issue of characterization. This limitation does not apply to:

(1) The introduction of evidence for impeachment or rebuttal purposes in which the evidence of drug abuse (or lack thereof) has been introduced first by the servicemember.

(2) Taking action based on independently derived evidence, including evidence of continued drug abuse after initial entry into a treatment and rehabilitation program.

f. The results of a urinalysis may be used on the issue of characterization except as provided in SECNAVINST 5300.28B (reference (s)).

C. Uncharacterized Separation

1. Entry Level Separation

a. A separation shall be described as an Entry Level Separation if separation processing is initiated while a servicemember is in entry level status, except when:

(1) characterization Under Other than Honorable Conditions is authorized under the reason for separation in part 1 and is warranted by the circumstances of the case; or

(2) characterization as Honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of naval duty and is approved on a case-by-case basis by the Secretary of the Navy. This characterization will be considered when the servicemember is separated by reason of Selected Changes in Service Obligations, Convenience of the Government, Disability, or Secretarial Plenary Authority (subsections B, C, D, and P of part 1).

b. With respect to administrative matters outside this instruction that require a characterization as Honorable or General, an Entry Level Separation shall be treated as the required characterization. This provision does not apply to administrative matters that expressly require different treatment of an Entry Level Separation except as provided in subsection C1c.

c. Per section 12685 of reference (b), an Entry Level Separation for a servicemember of a Reserve component separated from the Delayed Entry Program is "under honorable conditions."

2. Void Enlistments or Inductions. A servicemember whose enlistment or induction is void shall not receive a discharge certificate, characterization of service at separation, or an Entry Level Separation. If characterization or an Entry Level Separation is not required, the separation shall be described as an order of release from custody or control of the naval service. However, when a constructive enlistment arises, characterization of service is required under subsection C2c.

a. An enlistment is void in the following circumstances:

(1) If it was effected without the voluntary consent of a person who has the capacity to understand the significance of enlisting in the naval service, including enlistment of a person who is intoxicated or insane at the time of enlistment. (10 U.S.C. 504 (reference (b)); Article 2(b) UCMJ (reference (d))).

(2) If the person is under 17 years of age. (10 U.S.C. 505 (reference (b))).

(3) If the person is a deserter from another Military Service. (10 U.S.C. 504 (reference (b))).

b. Although an enlistment may be void at its inception, a constructive enlistment shall arise in the case of a person serving with the Department of the Navy who:

(1) Submitted voluntarily to military authority;

(2) Met the mental competency and minimum age qualifications of sections 504 and 505 of references (b), at the time of voluntary submission to military authority;

(3) Received military pay or allowances; and

(4) Performed military duties.

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c. If an enlistment that is void at its inception is followed by a constructive enlistment within the same term of service, characterization of service or description of separation shall be in accordance with subsections B or C1 of this part, as appropriate; however, if the enlistment was void by reason of desertion from another Military Service, the servicemember shall be separated by an order of release from the custody and control of the naval service regardless of any subsequent constructive enlistment. The occurrence of such a constructive enlistment does not preclude the separation authority in appropriate cases, from either retaining the servicemember or separating the servicemember under section E of part 1 on the basis of the circumstances that occasioned the original void enlistment or upon any other basis for separation provided in this instruction.

3. Dropping from the Rolls. A member (officer or enlisted) may be dropped from the rolls of the naval service when such action is authorized by the Department of the Navy and a characterization of service or other description of separation is not authorized or warranted.

PART 4

PROCEDURES FOR SEPARATION

A. Scope

1. The supplementary procedures in this part are applicable only when required under a specific reason for separation in part 1. These procedures are subject to the requirements set forth in part 1 with respect to specific reasons for separation.

2. When a servicemember is processed on the basis of multiple reasons for separation, the following guidelines apply to procedural requirements (including procedural limitations on characterization of service or description of separation):

a. The requirements for each reason will be applied to the extent practicable.

b. If a reason for separation set forth in the notice of proposed action requires processing under the Administrative Board Procedure (section C), the entire matter shall be processed under section C.

c. If more than one reason for separation is approved, the guidance on characterization that provides the greatest latitude may be applied.

d. When there is any other clear conflict between a specific requirement applicable to one reason and a general requirement applicable to another reason, the specific requirement shall be applied.

e. If a conflict in procedures cannot be resolved on the basis of the foregoing principles, the procedure most favorable to the respondent shall be used.

B. Notification Procedure

1. Notice. If the Notification Procedure is initiated under part 1, the respondent shall be notified in writing of the matter set forth in this section.

a. The basis of the proposed separation, including the circumstances upon which the action is based and a reference to the applicable provisions of this instruction.

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b. Whether the proposed separation could result in discharge, release from active duty to a reserve component, transfer from the Selected Reserve to the IRR, release from custody or control of the naval service, or other form of separation.

c. The least favorable characterization of service or description of separation authorized for the proposed separation.

d. The right to obtain copies of documents that will be forwarded to the separation authority supporting the basis of the proposed separation. Classified documents may be summarized.

e. The respondent's right to submit statements.

f. The respondent's right to consult with counsel qualified under article 27(b)(1) of the UCMJ (reference (d)), (except when nonlawyer counsel may be appointed under subsection B4 of this part).

g. If the respondent has 6 or more years of total active and reserve military service, the right to request an Administrative Board.

h. If eligible for an Administrative Board, the respondent's right to representation at the Administrative Board either by military counsel appointed by the convening authority or by military counsel of the respondent's own choice under subsection B4.

i. If eligible for an Administrative Board, the right to representation at the Administrative Board by civilian counsel at the respondent's own expense.

j. The right to waive the rights in subsections B1d through i., after being afforded a reasonable opportunity to consult with counsel, and that failure to respond shall constitute a waiver of the rights in subsection B1d through i.

k. Failure to appear without good cause at a hearing constitutes waiver of the right to be present at the hearing.

2. Additional Notice Requirements

a. If separation processing is initiated on the basis of more than one reason under part 1, the requirements of subsection B1a, apply to all proposed reasons for separation.

b. If the respondent is in civil confinement, absent without leave, or in a reserve component not on active duty or upon transfer to the IRR, the relevant notification procedures in parts 7, 8, and 9 apply.

c. In those cases that may be subject to a reimbursement requirement for recoupment of advance education assistance costs, bonuses, or special pays, the respondent must be advised of such requirement prior to submitting a request for voluntary separation or making a decision on an involuntary separation resulting from alleged misconduct. (Failure to provide such advisement, however, shall not constitute grounds for avoiding a reimbursement requirement unless otherwise expressly provided by law or superior regulation.)

d. If the servicemember is Fleet Reserve/retired list eligible and has refused to request transfer to the Fleet Reserve/retired list under subsection A2e of part 2, the member's notification letter shall include a statement reflecting such refusal and acknowledging the servicemember's understanding that if separation is approved, he or she may lose all retainer/retired pay and benefits.

e. Additional notification requirements are set forth in section D of part 1, when characterization of service as General (under honorable conditions) is authorized and the servicemember is processed for separation by reason of Disability.

3. Response. The respondent shall be provided a reasonable period of time, but not less than 2 working days, to act on the notice. An extension may be granted upon a timely showing of good cause by the respondent. The decision of the respondent on each of the rights set forth in subsections B1d through i, and applicable provisions referenced in subsection B2, shall be recorded and signed by the respondent and counsel subject to the following limitations:

a. If notice by mail is authorized under parts 7, 8 or 9 and the respondent fails to acknowledge receipt, submit a timely reply, or if the respondent is absent without authority and fails to return to military control by the date specified in the notice, that fact shall constitute a waiver of rights and an appropriate notation shall be recorded on a retained copy of the appropriate form.

b. If the respondent declines to respond as to the selection of rights, such declination shall constitute a waiver of rights and an appropriate notation will be made on the form provided for respondent's reply. If the respondent indicates that one or more of the rights will be exercised, but declines to sign the appropriate form, the selection of rights will be noted and an appropriate notation as to the failure to sign will be made.

4. Counsel

a. A respondent has the right to consult with qualified counsel when the Notification Procedure is initiated, except under the following circumstances:

(1) The respondent is away from or deployed outside the United States or away from its overseas home port, or to a shore activity remote from Judge Advocate resources;

(2) no qualified counsel is assigned and present at the vessel, unit, or activity;

(3) the commanding officer does not anticipate having access to qualified counsel from another vessel, unit, or activity, for at least the next 5 days; and

(4) the commanding officer determines that the needs of the naval service require processing before qualified counsel will be available.

b. Nonlawyer counsel shall be appointed whenever qualified counsel is not available under subsection B4a. Any appointed nonlawyer counsel shall be a commissioned officer with no prior involvement in the circumstances leading to the basis of the proposed separation, and no involvement in the separation process itself. The nonlawyer counsel shall be encouraged to seek advice by telephone or other means from any judge advocate on any legal issue relevant to the case whenever practicable. When a nonlawyer counsel is appointed, the appointing letter shall state that qualified counsel is unavailable for the applicable reason in subsection B4a, and that the needs of the naval service warrant processing before qualified counsel will be available; a copy of the appointing letter will be attached to each copy of the written notice of separation proceedings.

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c. The respondent may also consult with a civilian counsel at the respondent's own expense. The respondent's use of a civilian counsel does not eliminate the requirement to furnish counsel in subsections B4a or B4b. Consultation with civilian counsel shall not delay orderly processing in accordance with this instruction.

C. Administrative Board Procedure

1. Notice. If an Administrative Board is required, the respondent shall be notified in writing of the matters in this section.

a. The basis of the proposed separation, including the circumstances upon which the action is based and reference to the applicable provisions of this instruction.

b. Whether the proposed separation could result in discharge, release from active duty to a Reserve component, transfer from the Selected Reserve to the IRA, release from the custody or control of the naval service, or other form of separation.

c. The least favorable characterization of service or description of separation authorized for the proposed separation.

d. The right to obtain copies of documents that will be forwarded to the separation authority supporting the basis of the proposed separation. Classified documents may be summarized.

e. The respondent's right to submit statements to the administrative board or the separation authority in lieu of a hearing.

f. The respondent's right to consult with counsel as prescribed in section B1f of this part. However, nonlawyer counsel may not represent a respondent before an Administrative Board unless (1) the respondent expressly declines appointment of counsel qualified under article 27(b)(1) of the UCMJ (reference (d)) and requests a specific nonlawyer counsel; or (2) the separation authority assigns nonlawyer counsel as assistant counsel.

g. The respondent's right to request a hearing before an Administrative Board.

h. The respondent's right to representation at the Administrative Board either by military counsel appointed by the convening authority or by military counsel of the respondent's own choice under subsection C14.

i. The right to representation at the Administrative Board by civilian counsel at the respondent's own expense.

j. The right to waive the rights in subsections C1d through i, after being afforded a reasonable opportunity to consult with counsel, and that failure to respond shall constitute a waiver of the rights in subsection C1d through i.

k. Failure to appear, without good cause at a hearing constitutes waiver of the right to be present at the hearing.

2. Additional Notice Requirements

a. If separation processing is initiated on the basis of more than one reason under part 1, the requirements of subsection C1a apply to all proposed reasons for separation.

b. If the respondent is in civil confinement, absent without leave, or in a reserve component not on active duty or upon transfer to the IRA, the relevant notification procedures in parts 7, 8, or 9 apply.

c. In those cases that may be subject to a reimbursement requirement for recoupment of advance education assistance costs, bonuses, or special pays, the respondent must be advised of such requirement prior to submitting a request for voluntary separation or making a decision on an involuntary separation resulting from alleged misconduct. (Failure to provide such advisement, however, shall not constitute grounds for avoiding a reimbursement requirement unless otherwise expressly provided by law or superior regulation.)

d. If the servicemember is Fleet Reserve/retired list eligible and has refused to request transfer to the Fleet Reserve/retired list under subsection A2e of part 2, the servicemember's notification letter shall include a statement reflecting such refusal and acknowledging the servicemember's understanding that if separation is approved, he or she may lose all retainer/retired pay and benefits.

3. Response. The respondent shall be provided a reasonable period of time, but not less than 2 working days, to act on the notice. An extension may be granted upon a timely showing of good cause by the respondent. The decision of the respondent on each of the rights set forth in subsections C1d through i, and applicable provisions referenced in subsection C2, shall be recorded and signed by the respondent and counsel, subject to the following limitations:

a. If notice by mail is authorized under parts 7, 8 or 9 and the respondent fails to acknowledge receipt, submit a timely reply, or if the respondent is absent without authority and fails to return to military control by the date specified in the notice, that fact shall constitute a waiver of rights and an appropriate notation shall be recorded on a retained copy of the appropriate form.

b. If the respondent declines to respond as to the selection of rights, such declination shall constitute a waiver of rights and an appropriate notation will be made on the form provided for respondent's reply. If the respondent indicates that one or more of the rights will be exercised, but declines to sign the appropriate form, the selection of rights will be noted and an appropriate notation as to the failure to sign will be made.

4. Counsel

a. A respondent has the right to consult with counsel, as prescribed in subsection B4 of this part, prior to electing or waiving any of his or her rights under subsections C1d through i.

b. If an administrative board is elected, the respondent shall be assigned a counsel qualified under article 27(b)(1) of the UCMJ (reference (d)). Navy and Marine Corps Judge Advocates may be detailed by their commanding officer, officer in charge, or by his or her designee. When permissible, nonlawyer counsel may be detailed by the convening authority. The respondent has the right to be represented before an administrative board by qualified individual military counsel of the respondent's own choice, if that counsel is reasonable available, as follows.

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(1) The respondent may request a qualified counsel who is assigned duties as defense counsel at the servicing command. The determination of reasonable availability is within the sole discretion of the requested counsel's detailing authority, and that decision is final.

(2) Unless otherwise directed, appointment of a qualified counsel of respondent's own choice relieves the previously assigned counsel. If respondent so requests in writing and if the interest of fair procedure so required, the detailing authority may continue the previously assigned counsel in representing respondent. Approval is within the sole discretion of the detailing authority and that decision is final.

c. The respondent may also consult with a civilian counsel and may be represented at the Administrative Board by that counsel, all at the respondent's own expense. The respondent's use of a civilian counsel does not eliminate the requirement to furnish counsel in subsections C4a or C4b. Consultation with civilian counsel shall not delay orderly processing in accordance with this instruction.

d. Nonlawyer counsel may represent a respondent before an Administrative Board if:

(1) The respondent expressly declines appointment of qualified counsel and requests a specific nonlawyer counsel; or

(2) The separation authority assigns nonlawyer counsel as assistant counsel.

D. Conditional Waiver

1. A respondent entitled to an Administrative Board may request a conditional waiver after a reasonable opportunity to consult with counsel under subsection C1d. A conditional waiver is a statement initiated by a respondent waiving the right to Board proceedings contingent upon receiving a characterization of service or description of separation higher than the least favorable characterization or description authorized for the basis of separation set forth in the notice to the respondent.

2. When a respondent requests a conditional waiver, the commanding officer shall forward a copy of the notice, the conditional waiver, and a recommendation to the separation authority (see part 6) for action. The separation authority may either grant the waiver or deny it if it is inconsistent with the guidance set forth in part 2.

E. Actions of the Commanding Officer

1. Forward to the convening authority a copy of the notice required in subsection B1 or C1 of this part.

2. If required by the Chief of Naval Operations or the Commandant of the Marine Corps, forward to the convening authority recommendations, with specific supporting rationale, on the Board's findings and recommendations, with respect to:

a. Specific reasons for separation as set forth in part 1;

b. Retention, separation or suspension of separation;
and

c. Characterization of service or description of separation following the guidance in part 3. If the Board recommends a characterized separation, the commanding officer may not recommend a less favorable characterization. If the Board recommends an uncharacterized Entry Level Separation, the commanding officer may recommend a characterized separation, with supporting justification, only if it meets the requirements of subsection C1 of part 3.

F. Actions of the Convening Authority

1. Appoint an Administrative Board as described in subsection A1 of part 5.

2. Make provisions for respondent's counsel as appropriate.

3. Make provisions for witnesses as appropriate.

4. Rule finally on all challenges for cause of legal advisors, when appointed, and of Board members when a legal advisor has not been appointed.

5. Forward to the separation authority the findings and recommendations of the Board, the record of the Board's proceedings, and the recommendation of the commanding officer, if any.

6. Make a recommendation with specific rationale, to the separation authority on each of the Board's findings and recommendations if the commanding officer is not so required.

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PART 5GUIDELINES ON CONDUCTING AN ADMINISTRATIVE BOARD

A. Hearing Procedure. If a respondent requests a hearing before an Administrative Board, the following procedures are applicable:

1. Composition

a. The convening authority shall appoint to the Administrative Board at least three experienced commissioned, warrant, or noncommissioned officers. Enlisted personnel appointed to the Board shall be in grade E-7 or above, and shall be senior to the respondent. At least one member of the Board shall be serving in the grade of O-4 or higher, and a majority shall be commissioned or warrant officers. The senior member shall be the president of the Board. The convening authority also may appoint to the Board a nonvoting recorder. A nonvoting legal advisor may be appointed to assist the Board.

b. If the respondent is an enlisted servicemember of a Reserve component or holds an appointment as a Reserve commissioned or warrant officer, the Board shall include at least one Reserve officer as a voting member. Additionally, all Board members will be commissioned officers if an Under Other Than Honorable Characterization from the Reserve component may be authorized. (See 10 U.S.C., Section 12685 (reference (b))). Voting members shall be senior to the respondent's reserve grade (See 10 U.S.C. Section 266 (reference (b))).

c. The convening authority shall ensure that the opportunity to serve on Administrative Boards is given to women and minorities. The mere appointment or failure to appoint a member of such a group to the Board, however, does not provide a basis for challenging the proceeding.

d. The respondent may challenge a voting member of the Board or the legal advisor, if any, for cause only.

2. Presiding Officer. The president shall preside and rule finally on all matters of procedure and evidence, but the rulings of the president may be overruled by a majority of the Board. If appointed, the legal advisor shall rule finally on all matters of evidence and challenges except challenges to him or herself.

3. Witnesses

a. The respondent may request the attendance of witnesses in his or her own behalf at the hearing.

b. The respondent may submit a written request for temporary duty (TDY) or invitational travel orders for witnesses. Such a request shall contain the following matter:

(1) A synopsis of the testimony that the witness is expected to give.

(2) An explanation of the relevance of such testimony to the issues of separation or characterization.

(3) An explanation as to why written or recorded testimony would not be sufficient to provide for a fair determination.

c. The convening authority may authorize expenditure of funds for production of witnesses only if the presiding officer (after consultation with a judge advocate) or the legal advisor (if appointed) determines that:

(1) The testimony of a witness is not cumulative;

(2) The personal appearance of the witness is essential to a fair determination on the issues of separation or characterization;

(3) Written or recorded testimony will not accomplish adequately the same objective;

(4) The need for live testimony is substantial, material, and necessary for a proper disposition of the case; and

(5) The significance of the personal appearance of the witness, when balanced against the practical difficulties in producing the witness, favors production of the witness. Factors to be considered in relation to the balancing test include, but are not limited to, the cost of producing the witness, the timing of the request for production of the witness, the potential delay in the proceeding that may be caused by producing the witness, or the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.

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d. If the convening authority determines that the personal testimony of a witness is required, the hearing will be postponed or continued if necessary to permit the attendance of the witness.

e. The hearing shall be continued or postponed to provide the respondent with a reasonable opportunity to obtain a written statement from the witness if a witness requested by the respondent is unavailable in the following circumstances:

(1) When the presiding officer determines that the personal testimony of the witness is not required;

(2) When the commanding officer of a military witness determines that military necessity precludes the witness' attendance at the hearing; or

(3) When a civilian witness declines to attend the hearing.

f. Subsection A3e(3), does not authorize a Federal employee to decline to appear as a witness if directed to do so in accordance with applicable procedures of the employing agency.

4. Record of Proceedings. In cases where the Board recommends separation, the record of the proceedings shall be kept in summarized form unless a verbatim record is required by the separation authority. In cases where the Board recommends retention, a record of the proceedings is optional unless required by the separation authority. However, a summarized or verbatim record shall be prepared in any case where the Board recommends retention and the separation authority elects to forward the matter to the Secretary of the Navy under subsection C2b(2) of part 6. The Board reporter shall retain all materials necessary to prepare a transcript should the separation authority elect to forward the case to the Secretary of the Navy. In all cases, the findings and recommendations of the Board shall be in verbatim form.

5. Presentation of Evidence. The rules of evidence for courts-martial and other judicial proceedings are not applicable before an Administrative Board. Reasonable restriction shall be observed, however, concerning relevancy and competency of evidence. The president of the board has full authority to decline to accept evidence whose probative value is outweighed by the prejudicial effect on the respondent, or which would cause unnecessary embarrassment to a witness or victim involved in the case.

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6. Rights of the Respondent

a. The respondent may testify in his/her own behalf, subject to the provisions of article 31(a), UCMJ (reference (d)).

b. At any time during the proceedings, the respondent or counsel may submit written or recorded matter for consideration by the Board.

c. The respondent or counsel may call witnesses on behalf of the respondent.

d. The respondent or counsel may question any witness who appears before the Board.

e. The respondent or counsel may present argument prior to when the Board closes the case for deliberation on findings and recommendations.

7. Findings and Recommendations

a. The Board shall determine its findings and recommendations in closed sessions. Only voting members of the Board shall be present.

b. The Board shall determine whether each allegation in the notice of proposed separation is supported by a preponderance of the evidence.

c. The Board shall then determine under the guidance in section A of part 2 whether the findings warrant separation with respect to the reason for separation set forth in the Notice. If more than one reason was contained in the Notice, there shall be a separate determination for each reason.

d. The Board shall make recommendations on the following:

(1) Retention or separation. The Board shall recommend retention or separation.

(2) Suspension of separation. If the Board recommends separation, it may recommend that the separation be suspended in accordance with section B of part 2. The recommendation of the Board as to suspension is not binding on the separation authority.

(3) Characterization of Service or Description of Separation. If separation or suspended separation is recommended, the Board shall recommend a characterization of service or description of separation as authorized in part 1 (Reasons for Separation) in accordance with the guidance in section C of part 2.

(4) Transfer to the Ready Reserve. The Board shall make a recommendation as to whether the respondent should be retained in the Ready Reserve as a mobilization asset to fulfill the respondent's total military obligation. The recommendation must be consistent with the limitations in paragraph 5 of this instruction. This option applies to cases involving separation from active duty or from the Selected Reserve. Part 8 is applicable if the recommendation for retention in the Ready Reserve is approved.

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PART 6**SEPARATION AUTHORITY**

A. Determining Separation Authority. The Chief of Naval Operations and the Commandant of the Marine Corps may delegate separation authority in accordance with the following chart.

IF the servicemember is being processed for separation by reason of...	THEN, subject to the rules at the end of this chart, the separation authority is the...
Selected Changes in Service Obligations - Inactive Reserves Selected Changes in Service Obligations - Immediate reenlistment Selected Changes in Service Obligations - Within 90 days of EAOS Expiration of Service Obligation	Commanding officer or higher
COG - Early release to further education COG - Other designated physical or mental conditions COG - Review action COG - Dependency or hardship COG - Parenthood COG - Pregnancy or childbirth COG - Personality disorder COG - Surviving family member COG - Reservist becomes a minister COG - Separation of aliens	Special Court-Martial Convening Authority (SPCMCA) or higher

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IF the servicemember is being processed for separation by reason of...	THEN, subject to the rules at the end of this chart, the separation authority is the...
<p>Weight control failure</p> <p>Entry level performance and conduct</p> <p>Unsatisfactory performance</p> <p>Drug abuse rehabilitation failure</p> <p>Alcohol abuse rehabilitation failure</p> <p>Defective Enlistments and Inductions - Erroneous</p> <p>Defective Enlistments and Inductions - Minority</p> <p>Defective Enlistments and Inductions - Defective enlistment agreements</p> <p>Defective Enlistments and Inductions - Separation from the delayed entry program</p>	<p>Special Court-Martial Convening Authority (SPCMCA) or higher</p>
<p>COG - Conscientious objection</p> <p>Selected Changes in Service Obligations - General demobilization or reduction in authorized strength</p> <p>Selected Changes in Service Obligations - Acceptance of active duty commission or appointment, or acceptance into a program leading to such a commission or appointment in any branch of the Military Services.</p> <p>Homosexual conduct</p>	<p>General Court-Martial Convening Authority (GCMCA) or higher</p>

IF the servicemember is being processed for separation by reason of...	THEN, subject to the rules at the end of this chart, the separation authority is the...
<p>Defective Enlistments and Inductions - Fraudulent entry into the naval service</p> <p>Misconduct - Minor disciplinary infractions</p> <p>Misconduct - A pattern of misconduct</p> <p>Misconduct - Commission of a serious offense</p> <p>Misconduct - Civilian conviction</p> <p>Misconduct - Drug abuse</p> <p>Security</p> <p>Unsatisfactory participation in the ready reserve</p>	<p>GCMCA or higher when the Administrative Board Procedure is used and:</p> <ul style="list-style-type: none"> - Board recommended OTH - Board recommended retention - Servicemember waived a Board; or - Servicemember requested a conditional waiver. <p>SPCMCA or higher when:</p> <ul style="list-style-type: none"> - The Notification Procedure is used; or - The Administrative Board Procedure is used and the Board recommended separation with an Honorable, General, or Entry Level Separation.
<p>Separation in lieu of trial by court-martial</p>	<p>GCMCA or higher, unless request is based only on an absence without leave for more than 30 days, then the SPCMCA is separation authority.</p> <p><u>Note:</u> see section L. of part 2.</p>
<p>Secretary Plenary Authority</p> <p>Disability</p>	<p>Secretary of the Navy</p>

Rules:

1. The Secretary of the Navy is separation authority:

a. For involuntary separation of active duty reservists within 2 years of retired or retainer pay (10 U.S.C. 12686 reference (b)).

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b. When the sole basis for separation is a serious offense that resulted in a conviction by a special or general court-martial that did not impose a punitive discharge, and an Other Than Honorable discharge is warranted.

c. When the separation authority above determines that a characterization of service as Honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of naval duty for a service member in an entry level status who is being separated by reason of Selected Changes in Service Obligation, Convenience of the Government, Disability, or Secretarial Plenary Authority (subsections B, C, D, and P of part 1).

d. When an Administrative Board finds that a preponderance of the evidence supports one or more of the reasons for separation alleged and recommends retention, but the separation authority above recommends separation.

e. When a servicemember is processed for separation by reason of misconduct - civilian conviction, and final action on the appeal has not been taken, and the servicemember does not request separation before final action on the appeal has been taken.

2. The Secretary of the Navy may assign any of his or her functions, powers, and duties hereunder to the Under Secretary of the Navy and/or the Assistant Secretary of the Navy (M&RA).

3. The Chief of Naval Operations and the Commandant of the Marine Corps are separation authority for involuntary separation of active duty servicemembers who have 18 or more years total active military service. The Chief of Naval Operations and the Commandant of the Marine Corps may delegate this authority within their respective headquarters, but not below the Chief of Naval Personnel or DCS/M&RA.

4. In separations for conscientious objection, when the GCMCA recommends disapproval, the Chief of Naval Operations or the Commandant of the Marine Corps will make final determination based in the entire record. The Chief of Naval Operations and the Commandant of the Marine Corps may delegate this authority within their respective headquarters, but not below the Chief of Naval Personnel or DCS/M&RA.

B. Separations Must Be Consistent with the Following:

1. Servicemembers must be processed for all reasons for which minimum criteria are met. However, separation authorities must choose the most appropriate reason when actually effecting the discharge.

2. If the separation authority finds legal prejudice to a substantial right of the respondent or that the findings of the Board were obtained by fraud or collusion, the case may be referred to a new Board. No member of the new Board shall have served on a prior Board that considered the case. The separation authority may not approve findings and recommendations less favorable to the respondent than those rendered by the previous Board unless the separation authority finds that fraud or collusion in the previous Board is attributable to the respondent or to an individual acting on the respondent's behalf.

3. Separation Authorities must protect against waste of funds paid for selective reenlistment bonuses, military education programs, etc., by recouping and ensuring maximum collection of indebtedness using DoD 7000.14-R, DOD Financial Management Regulation, Volume 7A, Military Pay Policy and Procedures Active Duty and Reserve, Table 7-7-6 (NOTAL).

C. Separation Authority Actions

1. No Administrative Board is Held. The separation authority shall determine whether there is sufficient evidence to verify the allegations set forth in the notification of the basis for separation. If the allegation is not supported by a preponderance of the evidence, it may not be used as a basis for separation.

a. If there is a sufficient factual basis for separation, the separation authority shall determine whether separation is warranted under the guidance in sections A and B of part 2. On the basis of that guidance, the separation authority shall direct one of the following actions:

(1) Retention;

(2) Separation for the most appropriate reason under part 1 as stated in the notification letter; or

(3) Suspend separation following guidance in section B of part 2.

(4) If the servicemember is Fleet Reserve/retired list eligible, suspend separation pending servicemembers agreement to transfer to the Fleet Reserve/retired list within 30 days.

b. When separation or suspension of separation is directed, the separation authority shall assign a characterization or description of separation following guidance set forth in part 3 and in the section in part 1 outlining the specific reason for separation.

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c. The separation authority shall make a determination as to whether the respondent should be retained in the Ready Reserve as a mobilization asset to fulfill the respondent's total military obligation subject to paragraph 5 of this instruction. In making a determination on retention in the Ready Reserve, the separation authority should consider the investment in the respondent's training, probable availability for future recall and potential for useful service under conditions of full mobilization. This determination applies in cases involving separation from active duty or from the Selected Reserve.

2. An Administrative Board is Held. The separation authority, following the guidelines in section A of part 2 and the reason(s) for separation, shall take the following actions:

a. Finding and separation recommendation. If the Board finds that a preponderance of the evidence supports one or more of the reasons for separation alleged and recommends separation, the separation authority may:

(1) Approve the Board's findings and recommendations; or

(2) Approve the Board's findings, but modify the recommendations by one or more of the following actions when appropriate:

(a) Approve the separation but suspend execution as provided in section B of part 2.

(b) If the member is Fleet Reserve/retired list eligible, approve the separation but suspend execution pending servicemembers agreement to transfer to the Fleet Reserve/retired list within 30 days.

(c) Approve the separation but disapprove suspension of the separation.

(d) Change the recommended characterization of service or description to a more favorable characterization or description.

(e) Change the Board's recommendation concerning transfer to the IRR; or

(f) Approve the Board's findings but disapprove the Board's recommendation and retain the servicemember.

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(3) In every case in which characterization of service Under Other Than Honorable Conditions is recommended, the record of the Board's proceedings will be reviewed by a judge advocate or civilian attorney employed by the Military Department prior to action by the separation authority. Such review is not required when another characterization is recommended unless the respondent identifies specific legal issues for consideration by the separation authority.

b. Finding and retention recommendation. If the Board finds that a preponderance of the evidence supports one or more of the reasons for separation alleged but then recommends retention, the separation authority may:

(1) Approve the Board's findings and recommendation; or

(2) Submit the case to the Secretary of the Navy (SECNAV) recommending separation for one of the specific reasons which the Board found supported by the preponderance of the evidence. In such a case, the Secretary of the Navy may direct retention, separation or in the case of Fleet Reserve/retired list eligible personnel, suspend separation pending servicemembers agreement to transfer to the Fleet Reserve/retired list within 30 days. If the Secretary of the Navy approves separation, the characterization of service or description of separation will be Honorable, General (under honorable conditions) or an Entry Level Separation under the guidance in part 3. The separation authority must specify the evidence of record relied upon in reaching its conclusion.

c. Finding of no reason for separation

(1) If the Board finds a preponderance of the evidence does not support one or more of the reasons for separation alleged and recommends retention, the separation authority cannot separate the servicemember for that alleged reason. However, if the separation authority finds that the findings of the Board were obtained by fraud or collusion, the case may be referred to a new Board.

(2) Regardless of any Board finding in an individual case, the separation authority always retains the option of requesting separation of the servicemember by the Secretary under the Secretary's plenary authority. Prior to sending the discharge package to the Secretary, the separation authority should follow the notification procedure appropriate to this reason for separation.

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PART 7

ADDITIONAL PROVISIONS CONCERNING
SERVICEMEMBERS CONFINED BY CIVIL AUTHORITIES

A. If proceedings under this part have been initiated against a respondent confined by civil authorities, the case may be processed in the absence of the respondent. Subsection A6 of part 5 is not applicable except insofar as such rights can be exercised by counsel on behalf of the respondent.

B. The following requirements apply:

1. The notice shall contain the matter set forth in subsection B1 or C1 of part 4, as appropriate. The notice shall be delivered personally to the respondent or sent by registered mail or certified mail, return receipt requested (or by an equivalent form of notice if such service is not available for delivery by U.S. mail at an address outside the United States. If the servicemember refuses to acknowledge receipt of notice, the individual who mails the notification shall prepare a Sworn Affidavit of Service by Mail (see subsection C) which will be inserted in the servicemember's personnel file together with Postal Service Forms 3800 and 3811.

2. If delivered personally, receipt shall be acknowledged in writing by the respondent. If the respondent does not acknowledge receipt, the notice shall be sent by mail as provided in subsection B1.

3. The notice shall state that the action has been suspended until a specific date (not less than 30 days from the date of delivery) in order to give the respondent the opportunity to exercise the rights set forth in the notice. If the respondent does not reply by such date, the separation authority shall take appropriate action under part 6.

4. The name and address of the military counsel for appointed consultation shall be specified in the notice.

5. If the case involves entitlement to an Administrative Board, the respondent shall be notified that the Board will proceed in the respondent's absence and that the case may be presented on respondent's behalf by counsel for the respondent.

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C. Sworn Affidavit of Service by Mail

State of _____
County of _____

I, _____ (1) _____, being duly sworn,
declare that I am the _____ (2) _____ of
_____ (3) _____ and on the _____ day of _____ 19____, I
mailed the original notice, a true copy of which is attached
hereto, by Certified Mail (return receipt requested) (or by an
equivalent form of Notice if such service by U.S. Mail is not
available outside the United States) to _____ (4) _____,
that being the known confinement address by depositing the same
in an official depository of the U.S. Postal Service at
_____ (5) _____ in a securely wrapped and sealed U.S.
Government official postal envelope with a PS 3811, Domestic
Return Receipt, attached. A PS 3800, Receipt for Certified Mail
attesting to such action is attached to this affidavit.

signature and rank of individual
mailing notice

Sworn and subscribed before me this _____ day of _____ 19__.

signature and rank of officer
administering oath

Blank	Enter
1	Name of individual who mails the notice
2	Job title (e.g., personnel officer, legalman, etc...)
3	Unit name (e.g., USS MERRILL, 1st Marine Div, etc...)
4	Full name and rank of respondent and complete confinement mailing address
5	Location of post office where mailed

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PART 8

ADDITIONAL REQUIREMENTS FOR CERTAIN
SERVICEMEMBERS OF RESERVE COMPONENTS

A. Servicemembers of Reserve Components not on Active Duty

1. If proceedings under this part have been initiated against a servicemember of a reserve component not on active duty, the case may be processed in the absence of the servicemember in the following circumstances:

- a. At the request of the servicemember;
- b. If the servicemember does not respond to the notice of proceedings on or before the suspense date provided in the notice; or
- c. The servicemember fails to appear at a hearing as provided in subsection C1m of part 4.

2. The notice shall contain the matter set forth in subsections B1 or C1 of part 4, as appropriate.

3. If the action involves a transfer to the IRR under circumstances in which the procedures in this enclosure are applicable, the servicemember will be notified that the character of service upon transfer to the IRR also will constitute the character of service upon discharge at the completion of the naval service obligation unless the following conditions are met:

- a. The servicemember takes action to affiliate with a drilling unit of the Selected Reserve, and
- b. The servicemember satisfactorily participates as a drilling member of the Selected Reserve for a period of time, which, when added to any prior satisfactory service during this period of obligated service, equals the period of obligated service.

B. Transfer to the IRR

1. Upon transfer to the IRR, the servicemember will be notified of the following:

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a. The character of service upon transfer from active duty or the Selected Reserve to the IRR, and that the character of service upon completion of the naval service obligation in the IRR will be the same unless the conditions specified in subsection A3 are met.

b. The date upon which the military service obligation will expire.

c. The date by which the servicemember must submit evidence of satisfactory completion of the specified conditions set forth in subsection A3.

C. If the servicemember submits evidence of completion of the specified conditions set forth in subsection A3, but the separation authority proposes to issue a discharge other than an Honorable Discharge, the Notification Procedure shall be used. An Administrative Board is not required at this point notwithstanding the member's years of service.

D. If the servicemember does not submit such information on or before the date specified in the notice, no further proceedings are required. The character of discharge at the completion of the naval service obligation shall be the same as the character of service upon transfer from the Selected Reserve to the IRR.

E. The following requirements apply to the notices required by subsections A and B of this part.

1. Reasonable effort should be made to furnish copies of the notice to the servicemember through personal contact by a representative of the command. In such a case, a written acknowledgment of the notice shall be obtained.

2. If the servicemember cannot be contacted or refuses to acknowledge receipt of the notice, the notice shall be sent by registered or certified mail, return receipt requested (or by an equivalent form of notice if such service by U.S. Mail is not available for delivery at an address outside the United States) to the most recent address furnished by the servicemember as an address for receipt or forwarding of official mail. The individual who mails the notification shall prepare a Sworn Affidavit of Service by Mail (see subsection F), which will be inserted in the servicemember's personnel file together with PS 3800 and PS 3811.

F. Sworn Affidavit of Service by Mail

State of _____
County of _____

I, _____ (1) _____, being duly sworn,
declare that I am the _____ (2) _____ of
_____ (3) _____ and on the _____ day of _____ 19____, I
mailed the original notice, a true copy of which is attached
hereto, by Certified Mail (return receipt requested) (or by an
equivalent form of Notice if such service by U.S. Mail is not
available outside the United States) to _____ (4) _____,
that being the last known address given to _____ (5) _____
as the one at which official mail would be received by or
forwarded to the member, by depositing the same in an official
depository of the U.S. Postal Service at _____ (6) _____
in a securely wrapped and sealed U.S. Government official postal
envelope with a PS 3811, Domestic Return Receipt, attached. A
PS 3800, Receipt for Certified Mail, attesting to this action is
attached to this affidavit.

signature and rank of individual
mailing notice

Sworn and subscribed before me this _____ day of _____ 19____.

signature and rank of officer
administering oath

Blank	Enter
1	Name of individual who mails the notice
2	Job title (e.g., personnel officer, legalman, etc...)
3	Unit name (e.g., USS MERRILL, 1st Marine Div, etc...)
4	Full name and rank of respondent and complete mailing address
5	Unit name (e.g., USS MERRILL, 1st Marine Div, etc...)
6	Location of post office where mailed

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PART 9

ADDITIONAL REQUIREMENTS FOR SERVICEMEMBERS BEYOND MILITARY
CONTROL BY REASON OF UNAUTHORIZED ABSENCE

1. Determination of Applicability. If an officer authorized to separate under Administrative Board procedures, or higher authority, determines that separation is otherwise appropriate under this instruction, a member may be separated without return to military control in one or more of the following circumstances:

a. when absent without authority after receiving notice of initiation of separation processing;

b. when prosecution of a member who is absent without authority appears to be barred by the Statute of Limitations, article 43 of reference (b), and the statute has not been tolled by any of the conditions set out in article 43(d) of reference (b); or

c. when a member who is an alien, is absent without leave and appears to have gone to a foreign country where the United States has no authority to apprehend the member under a treaty or other agreement.

2. Notice. Prior to execution of a separation under paragraphs 1b or 1c of this enclosure, the member will be notified of the intended action by registered mail or certified mail, return receipt requested (or by an equivalent form of notice if such service by U. S. Mail is not available for delivery at an address outside the United States), to the member's last known address or to the next of kin under regulations prescribed by the Department of the Navy. The notice shall contain the matter set forth in the Notification Procedures (section B of Part 4) or the Administrative Board Procedures (section C of Part 4), as appropriate, and shall specify that the action has been suspended until a specific date (not less than 30 days from the date of mailing) in order to give the respondent the opportunity to return to military control. If the respondent does not return to military control by such date, the Separation Authority shall take appropriate action under paragraph A of Part 2.

3. Member of reserve component. Members of reserve components may be separated under Other than Honorable conditions only if processed by an Administrative Board composed of commissioned officers as provided in paragraph A1b of Part 5.

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C. Sworn Affidavit of Service by Mail

State of _____
County of _____

I, _____ (1) _____, being duly sworn,
declare that I am the _____ (2) _____ of
_____ (3) _____ and on the _____ day of _____ 19____, I
mailed the original notice, a true copy of which is attached
hereto, by Certified Mail (return receipt requested) (or by an
equivalent form of Notice if such service by U.S. Mail is not
available outside the United States) to _____ (4) _____,
that being the (last known address) and (next of kin address) at
which official mail would be received by or forwarded to the
member, by depositing the same in an official depository of the
U.S. Postal Service at _____ (5) _____ in a securely
wrapped and sealed U.S. Government official postal envelope with
a PS 3811, Domestic Return Receipt, attached. A PS 3800, Receipt
for Certified Mail attesting to this action is attached to this
affidavit.

signature and rank of individual
mailing notice

Sworn and subscribed before me this _____ day of _____ 19____.

signature and rank of officer
administering oath

Note: Two affidavits are required. One for that last known
address and one for the next of kin address.

Blank	Enter
1	Name of individual who mails the notice
2	Job title (e.g., personnel officer, legalman, etc...)
3	Unit name (e.g., USS MERRILL, 1st Marine Div, etc...)
4	Full name and rank of respondent and complete last known mailing address and next of kin address
5	Location of post office where mailed